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UNITED STATES ATTORNEYS

# USA Bulletin

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## TRIAL TECHNIQUES: Collecting, Analyzing, and Presenting Evidence

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## From the Editor-in-Chief

This issue of the *United States Attorneys' Bulletin* focuses on collecting, analyzing, and presenting evidence. Your response to this theme has been fantastic. We received so many articles useful to federal prosecutors that we have decided to run two issues on Trial Techniques, the next one on Courtroom Innovation. We welcome further submissions of articles that would be of assistance to your colleagues. This issue contains an interview with Special Agent Donald Thompson, the Acting Assistant Director in charge of the FBI Laboratory. The interview revealed several very helpful tools that we have passed on to you in this issue. Trying to figure out who does what in the Lab has always been a mystery to most of us. As of today, the mystery should be over. On pages 12 and 13, you will find an itemized list of Lab specialties with corresponding phone numbers. Judging from the national Email traffic, we have a great need to learn more about opposing experts. Did you know that the FBI Lab has a research service that helps their experts familiarize themselves with opposing experts? I asked Mr. Thompson if he would make that service available to Assistant United States Attorneys and he graciously agreed. Colleen Wade, who is in charge of the library service, confirmed that she is amenable to helping us. On page 11, you will find out how to reach her and learn more about the FBI's reference collection. Please let me know if these services are useful to you. Don't hesitate to call me with your ideas, comments, or criticisms. You can reach me in St. Croix at (809)773-3920 or at AVISC01(DNISSMAN).



DAVID MARSHALL NISSMAN

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# From Attorney General Janet Reno



*Attorney General Janet Reno*

**I**n this issue of the *United States Attorneys' Bulletin*, you'll find a number of interesting and lively articles on trial techniques. From my experience as a prosecutor, I'd like to share some thoughts on how we can make ourselves more effective in court and minimize some of the problems we encounter in trial work.

I have been so impressed by the quality of the preparatory work by Assistant United States Attorneys in federal cases. Preparation is the key to success in the courtroom. By completely researching the facts and the law, you are in the best position to carry out your obligations to the court and the public.

Preparation usually requires the building of a cohesive team. The earlier a trial attorney and an agent begin working together on a case, the better the government is served. While there is sometimes a natural tension between law enforcement agents and prosecutors, we should understand and respect the differences in our roles, agree to put the public interest first, and work constructively toward a common goal. As you begin working with your agents, take the time to explain why you are making the requests for additional investigative work. Mutual understanding removes many natural barriers.

Talk to your crime victims early. In addition to feelings of victimization, they are often bewildered by a legal system that at times seems incomprehensible. Taking the time to give them a little background on court procedures helps to remove some of the uncertainty they naturally feel. For many victims, the crime is only the first of their victimizations. The second can occur at the hands of a cold and insensitive criminal justice system. By bringing your victim in early, you can prevent the second victimization, and you will often be pleasantly surprised by how much information your crime victims have that can help your case.

Preparation has a number of other benefits as well. As I've travelled to the United States Attorneys' offices and talked to federal prosecutors about their cases, I'm impressed by how thoroughly they know their cases. By having a command of every fact in your case file, you are in a position to determine what information needs to be provided to the defendant under ethical and other court rules. This is an obligation that we welcome. We shouldn't convict people by withholding information. We should convict people on the whole record.

This brings me to a topic that I feel very strongly about—our ability to elevate and improve the legal system by our courtroom conduct and demeanor. It is so easy to get wrapped up in the facts of a case that sometimes we miss opportunities to use the courtroom to educate the public and act as proper representatives of the criminal justice system. This is our chance to breathe life into the rule of law as the most effective and civilized way of resolving disputes. Simply prevailing in a case will not, by itself, accomplish this mission. The way we present ourselves and our case dignifies the legal system. Opposing counsel may personally attack you, your agents, or your victims, but in resisting the urge to react personally we rise above the fray and preserve the dignity of the court. When we walk into the courtroom we are the ambassadors of the legal system, and we must be committed to elevating the dignity of the rule of law.

I know each one of you upholds those very principles in your representation of the United States. Keep up the great work! ♦

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# Interview with Donald W. Thompson, Jr., Acting Assistant Director, FBI Laboratory

Mr. Thompson has been Acting Assistant Director of the FBI Laboratory since January 16, 1996. He has been a Special Agent since 1973, where he served in assignments at the FBI's El Paso and Chicago offices, and the (former) Intelligence Division in FBI Headquarters in Washington, D.C. Leaving Headquarters in 1981, Mr. Thompson returned to the Chicago FBI office as a Supervisory Special Agent for five years, then returned to Washington, D.C., as Unit Chief of the (former) Intelligence Division. In 1987, he was named Assistant Section Chief in the Intelligence Division and remained in that position until 1989 when he was designated Assistant Special Agent in Charge of Foreign Counterintelligence at the Washington Metropolitan Field Office, Washington, D.C. In October 1991, Thompson was appointed Assistant Special Agent in Charge of the Northern Virginia Metropolitan Resident Agency, Washington Metropolitan Field Office. In August 1994, he assumed duties as Deputy Assistant Director of the Laboratory Division at FBI Headquarters and, upon the retirement of former Assistant Director of the FBI Laboratory Milton E. Ahlerich on January 15, 1996, Mr. Thompson assumed responsibility as Acting Assistant Director of the FBI Laboratory.

Mr. Thompson was interviewed by Assistant United States Attorney David Nissman (DN), Editor-in-Chief of the *United States Attorneys' Bulletin*, and Attorney Robert Lipman (RL), Criminal Division, Narcotic and Dangerous Drug Section, and former Assistant United States Attorney.

**DN:** What are the latest DNA developments?

**DT:** There are some recent developments in DNA and

the types of situations where we can utilize this technology. When DNA testing was first implemented in the Laboratory, we used the Restriction Fragment Length Polymorphism (RFLP) technique. RFLP requires a body fluid/blood stain at least the size of a dime. More recently, we started using other DNA techniques that utilize the Polymerase Chain Reaction (PCR). With this technique, you can obtain a DNA profile using far less sample and

even obtain a profile using a degraded sample. With RFLP, the sample generally cannot be degraded.

Often, blood at a crime scene, due to exposure to the elements, extended length of time, or other factors,

becomes degraded and may be useless for RFLP testing. PCR is more sensitive and can use a much smaller amount because the technique involves amplification of the DNA obtained at the crime scene. PCR employs an enzyme that multiplies the DNA to the point where there is enough to do a profile. The beauty of the technique is that only a very small amount of DNA is needed. For instance, licking a stamp or envelope flap may provide enough DNA from the saliva to run a PCR test.



*Acting Assistant Director  
Donald W. Thompson, Jr.*

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*"... licking a stamp or envelope flap may provide enough DNA from the saliva to run a PCR test."*

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Donald W. Thompson, Jr.



## **DNA Advisory Board**

**Chief Jay Miller**  
**Forensic Science Systems Unit**  
**(202)324-9441**

Congress recognized the importance of developing national standards for DNA analysis and proficiency testing by passing the DNA Identification Act of 1994. This Act established a DNA Advisory Board (DAB) to advise the FBI Director on matters related to national DNA testing standards, proficiency testing, and standards for data acceptance into CODIS.

In March of 1995, the FBI Director appointed 16 members to this advisory board, including scientists from state, local, and private laboratories; population and molecular geneticists; and a representative of the National Institute of Standards and Technology. The chairman of the DAB, Dr. Joshua Lederberg, is a recipient of the Nobel Prize in medicine for his work on cell structure. Other members of the Board include nationally recognized scientists and a justice of the Wisconsin Supreme Court who has experience in scientific evidence.

The DAB has met four times and made considerable progress in developing DNA standards to be issued by the FBI. Any state or local crime laboratory wishing to receive federal grant funding for upgrading their DNA capabilities, or to receive CODIS technology, must adhere to these standards as a condition for grant eligibility. ♦

Examiners in the Laboratory keep experimenting with different types of evidence and are finding that you can sometimes get DNA from such items as a sweatband in a hat. Envision any substance or material that a human has come in contact with and may have left a body fluid on. DNA testing may be possible in those instances and, for example, in a rape case we can even occasionally get a woman's DNA type from underwear that has been washed. Recently, I attended a conference with some Evidence Response Team (ERT) leaders. One of the

speakers, the DNA Unit Chief, encouraged investigators at the crime scenes to be innovative and imaginative since DNA technologies can be applied to many different types of evidence.

**DN:** Where did the PCR technique originate?

**DT:** Both the RLFP and PCR techniques grew up in the scientific research community. They were not law enforcement driven. These techniques were later viewed as applicable to forensics. We did a lot of research to develop procedures that would allow us to use RFLP and PCR on forensic samples. We did not create the technology or invent the technique—it was already out there; but through our research efforts, we brought it into a forensic setting.

We are bringing a new technique on line shortly. It will be limited to FBI cases and is called mitochondrial DNA. There are two types of DNA. One is nuclear DNA—the DNA is in the nucleus and we use nuclear DNA for the other techniques that I talked about, RFLP and PCR. The other type is mitochondrial DNA. Little organelles called mitochondria—the power stations in the cell—are in the cell outside of the nucleus. Mitochondria contain quite a bit more DNA than found in the nucleus of the cell. Everyone's nuclear DNA is a combination of DNA from our parents. DNA that is in the mitochondria only comes through the maternal line. Also, there is more mitochondrial than nuclear DNA. For example, there is sufficient mitochondrial DNA in bones and in hair shafts to be tested and typed. While a shaft of hair contains some nuclear DNA, there is not nearly enough to do a PCR examination, but there may be enough mitochondrial DNA to get a profile. We will use this technique when examiners in our Hairs and Fibers Unit make a microscopic match between two hair samples. The DNA test will be used to confirm the hair match.

**DN:** Can you explain the difference between nuclear and mitochondrial DNA?

**DT:** Nuclear DNA, which is inherited from both the mother and father, is unique to an individual, except if they have a twin. Mitochondrial DNA is inherited from the mother and an individual shares their DNA with siblings, their mother, and other relatives on the maternal

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side. A brother and sister would have the same mitochondrial DNA but different nuclear DNA.

**DN:** It will be more exclusive than traditional methods, but not as exclusive as if you had nuclear DNA.

**DT:** Nuclear DNA excludes everyone except your identical twin. But, mitochondrial DNA will not exclude people on the maternal side of your genealogy chart. This technique was once used to verify that the remains in a shallow grave in Russia were those of the last Russian czar. Mitochondrial DNA testing on the bones and teeth was done and the results were compared to the mitochondrial DNA of some known, living maternal relatives. They were able to confirm through mitochondrial DNA that the buried bones and teeth were those of Czar Nicholas II. This is going to give us another tool for investigators and prosecutors. It is a labor-intensive process, and we only have two examiners and two technicians qualified to do the work. So, we are going to use it on a limited basis (for federal cases). We are not offering it to state and local agencies at this time.

**DN:** When do you think you will start?

**DT:** Later this summer we will be on line. We want to use it in cases where there is a known subject that the comparison can be done on. We will be expanding our capability and qualified staff as we get additional resources.

**RL:** How important is it to preserve the crime scene so that nothing is overlooked or contaminated?

**DT:** Extremely important. For example, because the DNA PCR technique is so sensitive in terms of being able to detect it and work with such small amounts, the chance of contamination increases. We had a case in which someone sent in hair from a homicide for our Hairs and Fibers Unit to do hair comparisons. They also wanted us to examine the hair to see if it contained any DNA material. We examined the hair for DNA and, through the PCR technique, found substances on the hair that yielded some DNA. However, the DNA was not a match with either the victim or suspect. We then asked them to send blood and saliva samples from the examin-

er. We ran his DNA and made a comparison with the DNA we found on the hair. We called the case worker and informed him that we did find DNA on the hair but, unfortunately, it matched his examiner's. Obviously, as he was working with the hair, he touched it or perhaps sneezed on it and his DNA was left on it. So, the lesson is when you collect that type of evidence and intend to send it in for DNA testing, be extremely careful and meticulous about not contaminating the evidence.

**DN:** What is your emergency response team program and how did it start?

**DT:** We have investigators who are trained to handle crime scenes and to collect and preserve evidence. They learn that in training school and from a lot of on-the-job training. But traditionally, when you had very difficult crime scenes in very high priority, high impact cases and you needed the very best crime scene handling and treatment and the very best in collecting, identifying, and preserving evidence, the Laboratory would send people to the scene. We send people who have experience in evidence, knowledge of contamination issues, and a good understanding of what evidence is most likely probative.

A number of offices later recognized the merit of developing a cadre of investigators in their offices with advanced training in crime scene treatment and collecting and handling evidence. These investigators formed informal Evidence Response Teams (ERTs). The Laboratory recognized the value of this concept for every field division, so we formed an ERT unit in the Laboratory and mandated that every field office form a team. The ERT Unit was charged with advancing and formalizing this program.

The teams select members who consist of agents, a photographer, and an evidence technician. The concept is to provide team members with the very best advanced training we have in this area and to develop them into specialists—custodians of the evidence, the individuals who go in and sketch out the crime scene, the individuals who take the photos, and the individuals who physically collect the evidence. The ERTs are first afforded a two-week course and later, an advanced course. We have created a lot of protocols for them, including a manual that takes them from A to Z in dealing with a crime scene. The program has grown, and we have started to deploy



these teams at crime scenes that were formerly handled by FBI Laboratory personnel. We sent them to Oklahoma City, for example, where they performed superbly, and we continue to deploy them in very demanding situations.

**RL:** Are there things prosecutors could do at the early stage of an investigation in dealing with agents that would facilitate the ultimate goals of this effort?

**DT:** In any investigation, agents and prosecutors need to collaborate and anticipate the possibility of being confronted with a crime scene or search site. Such anticipation and planning are critical to building and successfully prosecuting a case. Our agent investigators have an excellent appreciation of that and are well aware of the ERT concept. One of the things this program does is places the

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*"In any investigation, agents and prosecutors need to collaborate and anticipate the possibility of being confronted with a crime scene or search site. Such anticipation and planning are critical to building and successfully prosecuting a case."*

Donald W. Thompson, Jr.

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expertise in each field office. Even if an entire ERT is not deployed to a particular crime scene, a case agent doing a search in a drug case, for example, can tap into the team's expertise and take one of them to the scene or ask their advice. Often in searches, prosecutors get involved in the planning stages and certainly, from the prosecutor's standpoint, there is a great deal of interest in ensuring that evidence is properly collected and preserved and the chain of custody is clean. ERT people can be of assistance in assuring that those equities are met. I think prosecutors should know that field offices have this capability in-house.

**DN:** What is the Racketeering Records and Analysis Unit?

**DT:** This unit descended from the old Cryptanalysis Unit whose main mission was decrypting documents that were an outgrowth of espionage cases going back to World War II. They had the ability to take a coded document and put it into English. As the FBI began investigating

## **Racketeering Records Analysis Unit**

**Chief Joseph Giglio**

**Racketeering Records Analysis Unit  
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**T**he Racketeering Records Analysis Unit (RRAU) provides expert forensic assistance in examinations of suspected clandestine business records within the areas of illicit drugs, money laundering, gambling, loansharking, prostitution, and electronic gambling devices. These services are available to all federal agencies, United States Attorneys, and military tribunals in both criminal and civil matters, as well as to duly constituted state, county, and municipal law enforcement agencies in the United States in connection with criminal investigative matters. Expenses for all services, including the provision of expert witnesses to testify in judicial proceedings and their travel expenses, are borne by the FBI.

James Mendiola and his associates were large marijuana traffickers operating out of San Antonio, Texas. A raid on their operations resulted in documents being recovered but only a few pounds of marijuana were confiscated. The documents were sent to RRAU for analysis. RRAU's analysis of the illicit drug records identified that approximately 8000 pounds of marijuana had been trafficked by the group. Testimony by an RRAU examiner was crucial to the convictions of the subjects. Since only a small quantity of drugs had been confiscated (practically a dry conspiracy case), the subjects' possibility of long-term incarceration was doubtful without the findings of the RRAU examiner. As a result, RRAU's report was used almost verbatim by the United States Probation Office to calculate the guidelines under which the subjects would be sentenced. The subjects were sentenced to terms of 78 months to life imprisonment. ♦

gambling cases and racketeering organizations, it was discovered that gamblers generate numerous documents to keep track of their transactions. They also encoded these documents. As investigators ran into these documents

during searches or arrests, they needed to know what they meant and asked the FBI Laboratory to take on this task.

We developed a cadre of people who could analyze and make sense out of these documents and records. When the FBI got into drug cases, we likewise formed a group of people who analyze drug records. This unit now has two segments—one that deals with gambling and racketeering records and the other drug records. Both have become extremely valuable and useful tools in the FBI's arsenal. The unit is frequently relied on, and its importance and value are becoming widely known and in demand.

**DN:** What is the protocol if an AUSA gets a case from another agency and wants help from the FBI Laboratory? Would the AUSA call the Laboratory and talk to them?

**DT:** If it is DEA or Customs, for example, they have a very good understanding of our capabilities. If they develop racketeering or drug records that need to be analyzed, they know how and where to send them. There are well-established lines of communication between the agencies. If an AUSA has a question along these lines, he/she can always directly contact the FBI Laboratory also. *(On pages 12 and 13 is the Directory of FBI Laboratory*

*Division Services with telephone and facsimile numbers for the Division's offices and sections, and an alphabetical list of types of services with telephone extensions.)*

**DN:** As federal cases are generated from the violent crime task forces and as the federalization of violent crime continues, many federal prosecutors are working on cases that used to be state and local cases and they may be working primarily with local police agencies. In these situations, can we call the Laboratory?

**DT:** It is not unusual to get a call on a particular investigation from a prosecutor. We certainly do not discourage this. If a prosecutor has a question about whether or not we have a capability that could help in a particular case,

they should call us or make an inquiry through the FBI office they are working with on the case.

**DN:** Do you have a unit called Special Projects that does computer animation?

**DT:** Yes, we have an Investigative and Prosecutive Graphic Unit in our Special Projects Section. This group's mission is to produce demonstrative evidence for use by prosecutors in the courtrooms. Using various computer-assisted aids and programs, they developed an ability to animate and reenact a crime scene. One example involved the homicide of a female by her husband. She was shot while in bed. He said it was an accident. To refute that, the angle at which the bullet was fired and how it entered her body had to be shown. Through autopsy and crime scene reports, the computer graphics people were able to portray the angle of the bullet to demonstrate how the woman was situated in bed when it happened. The animation clearly refuted the husband's version of the shooting. It was a very graphic way to show a jury what happened and, in this case, a picture was worth a thousand words.

I think prosecutors have always appreciated the value of having charts, models, and demonstrative evidence in the courtroom. They leave lasting impressions on jurors.

Among other things, the Bureau is applying computer technology, a technology that, for example, enables you to walk through a crime scene, take a series of photographs with a digital camera, and then produce a reproduction of the scene. It is our desire to

continue to provide better and more compelling tools along these lines to prosecutors to use in courtrooms.

**DN:** Prosecutors in the field have complained that while they are thrilled with the quality of the Laboratory's work, we sometimes get into trouble with judges because we do not get the reports in time to respond to discovery requests. How can we coordinate our efforts to deal with this issue?

Donald W. Thompson, Jr.

**DT:** One of the problems may be a lack of understanding of the length of time it takes to do certain examinations such as DNA. The RFLP technique, our bread and butter, and the one we first brought on-line, gives the most discriminating numbers. The technique we were using, at one stage, involved processing with a radioactive substance (P-32) and took at best from six to eight weeks, assuming that as soon as the sample came to us we started working on it uninterrupted and immediately reported the results. Using P-32 was very time consuming. A new technique we put on-line in the last four to six months called Chemiluminescence does in a two to three-week window of time what the radioactive P-32 process did in six to eight weeks. The new technique is reducing the amount of time it takes to do an RFLP test. Also, when we brought the PCR technique on-line, we began to receive more and different types of evidence for testing and incurred a lot more work. Before, you could not send in a postage stamp that had been licked because it wasn't suitable for RFLP. But now, you can do a PCR test. Or you might get a very small sample of blood at a crime scene that you could not send in for RFLP testing but can for PCR testing.

**DN:** So, instead of getting one or two samples, you are getting 10 or 12?

**DT:** Yes. As we bring some of these new techniques on-line, we end up with a great deal more work. Also, turnover time is a function of resources and manpower. The situation will be improving though because our staff is being increased pretty dramatically; we have been fortunate in the budget process in the last couple of years to get additional personnel. We have recently hired 75 new examiners in the Laboratory Division and have authority to hire an additional 110 personnel bringing our total staff up to 653. Of the new hires, many will be forensic examiners and scientists. However, it will take some time to get these people through the hiring process, fully trained and qualified, so we will not experience an immediate upsurge in capabilities.

**DN:** In terms of an informal process, one solution may be for the agent or prosecutor in touch with Laboratory personnel to get background on a particular case; for example, to say, "I have x-number of cases, I am going to get to this in two or three weeks, it is going to take four or five weeks from then." Then at a very early stage

in the proceedings the prosecutor could notify the defense attorney and the court. This seems more reasonable than a judge looking at a motion by the defendant that says we have a speedy trial clock that is 70 days, and we are on the 65th day and do not have these results. If everybody

knows ahead of time, the problem can be avoided.

**DT:** The key is that there is a clear, early understanding on the part of the prosecutor and the investigator of how quickly we can get something in and out so they can deal with the courts. Generally, our experience has been that judges are rather sympathetic to the problem and communicating with them early is the key. I think prosecutors need to realize that the transition from an all agent examiner staff to a mix of agent and professional support persons has temporarily slowed the Laboratory's turnaround time. It is important for the prosecutor to be communicating with the investigator and the Laboratory examiner(s) on such issues as judicial deadlines and trial dates, as well as progress being made on examinations to meet those deadlines and dates. Early and open dialogue forestalls problems.

**DN:** Are you now taking people into the Laboratory who are data analysts and not Special Agents?

**DT:** This is a radical and fundamental shift in the way we have been doing business. We have had exclusively agents on the bench since day one. A decision was made a couple of years ago to reduce the number of agents in the Laboratory and replace many of them with professional support examiners. The only exception to this occurs in our Latent Fingerprint Section where the examiners have always been professional support personnel—not agents.

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*"It is important for the prosecutor to be communicating with the investigator and the Laboratory examiner(s) on such issues as judicial deadlines and trial dates, as well as progress being made on examinations to meet those deadlines and dates."*

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Donald W. Thompson, Jr.

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**DN:** How is it working?

**DT:** It has been a difficult process, but it is proceeding very well. We have and continue to hire a lot of new examiners to replace the agents that have and continue to depart. We are actually hiring more support examiners than agents who are leaving and will have more examiners overall at the end of the transition period. In the interim, the reduced agent staff are not only performing case work, but are also involved in training and indoctrinating new examiners. This has hurt our turnaround time on cases. This has been mitigated to some extent because some of the new examiners came on board and hit the ground running because they were doing this work in other state and local laboratories. We also had a cadre of Laboratory personnel who were not agents but technicians and who had advanced degrees and had been working with agents for many years. However, under the old system, because they were not agents, they could not be full-fledged examiners. We have now promoted many of these technicians to the examiner position. In general, the transition is advancing well, but we have suffered a short-term slowdown in processing cases.

**DN:** Do these people who were formerly examiners and are now back to agent work make up part of these ERTs?

**DT:** Yes. They are a valuable resource. Many of them are on ERTs; in some cases they are the leaders of the teams. For example, Miami has one of our better ERTs and the team leader is a former Laboratory person. The forensic aspects of our field operations have certainly profited from the exodus of Laboratory agents.

**DN:** Tell us about the new laboratory you are planning.

**DT:** That is one of the really important things on our agenda right now. It is critical that we build a new FBI Laboratory that positions us to meet the challenges of the next century. We have outgrown the FBI Headquarters facility and it is not conducive to traditional laboratory functions. We have special needs in venting air and disposing of by-products. Also, a forensic laboratory functions best as a stand-alone facility without other occupants.

**DN:** What is the new facility going to do and look like?

## **LABNET**

**Chief Jay Miller**  
**Forensic Science Systems Unit**  
**(202)324-9441**

The FBI is implementing a national forensic laboratory network (LABNET) which will permit all crime laboratories connected through this network to communicate with one another by transmitting data and images among various forensic databases. LABNET is a new initiative designed to facilitate sharing of forensic applications among federal, state, and local law enforcement agencies participating in the network. Initially, LABNET will host the FBI's DRUGFIRE database and, shortly thereafter, CODIS (a national DNA database) will be added. In the future, other forensic database applications will be added as they are developed, such as databases for fibers (FIBERNET), explosives (including bombs and bomb components) and explosives' residues (EXPRES), and the FBI's National Automotive Paint File and National Tape File.

LABNET should be operational during the fall of 1996. The backbone of LABNET will be created by placing routers in eight locations across the United States, including Sudbury, Massachusetts; Washington, D.C.; Tampa, Florida; Austin, Texas; Orange County, California; Portland, Oregon; Topeka, Kansas; and Broadview, Illinois. By creating this national forensic network with "hubs" in eight locations around the country, any state or local crime laboratory can participate in LABNET at minimal cost. ❖

**DT:** It will be a state-of-the-art facility that meets not only the scientific and technical needs of scientists working on the bench, but also meets or exceeds all health and safety standards. It will allow us to further develop and expand some emerging technologies and exploit new technologies. We also want it to be a model research and training center. The FBI wants to continue its leadership in researching and developing new forensic technologies. This facility will be a training and learning resource, not only for our own people, but for state and local law

## Combined DNA Index System (CODIS)

*Chief Jay Miller  
Forensic Science Systems Unit  
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**T**he FBI's DNA program provides a broad range of forensic services to state and local police agencies fighting violent crime. During Fiscal Year 1995, the FBI Laboratory performed over 2,500 DNA examinations, over 90 percent of which were for rape and murder cases.

In addition to DNA casework and research, the FBI Laboratory operates and maintains CODIS, the national DNA database system authorized by Congress in the DNA Identification Act of 1994. CODIS is a computer database collection of DNA profiles stored in three indexes: convicted offenders, unknown suspects, and population samples (for statistical purposes only). Using CODIS, state and local law enforcement agencies can search DNA samples against those already in the database at local and state levels.

Since its beginning as a pilot project in 1990, CODIS has been responsible for 28 case-to-offender hits and 45 case-to-case hits. As of April 1996, it is operational in 50 crime laboratories in 25 states. By the end of 1996, the FBI anticipates that CODIS will be operational in 62 crime laboratories.

For several years, states with multiple DNA laboratories have been using CODIS software to link serial rapes and identify suspects. For example, in November 1994, a man wearing a nylon stocking over his face forced a woman to perform oral sex. DNA profiles developed from semen and saliva samples from the woman's skirt were entered into the state-level CODIS database, and a suspect was identified. When confronted with this evidence, he confessed to the crime and is currently in prison.

The FBI is testing the ability of CODIS to allow matching of DNA profiles between states. This capability will allow linkages of cases and investigations across state lines and multiple jurisdictions. ♦

enforcement. While we do a very good job now in Quantico at our training and research facility, we would like to enhance and expand our efforts.

**DN:** So everything will be in one place?

**DT:** We will have our researchers and our trainers in one building with people that perform casework. With everyone under one roof, we can more easily use case examiners to assist teaching classes. The close interaction between trainers, researchers, and case examiners that occurs when they are in close proximity is healthy. I think that all of these things will make for a better-functioning operation.

**DN:** When will it be operational?

**DT:** We hope to break ground in 1998 and have the facility completed in late 1999 or 2000.

**DN:** Will you have room for expansion?

**DT:** Yes. We intend to build the facility to allow for one or more additional wings. We will be building the new facility at the FBI Academy in Quantico, Virginia, and the site we are looking at will have some room for expansion.

**DN:** What is LABNET?

**DT:** This is a follow-up development on two of our ongoing projects—DRUGFIRE and CODIS. LABNET will be an electronic information highway between federal, state, and local laboratories that will enable real-time movement of data and images between them.

**DN:** CODIS involves DNA, right?

**DT:** Yes. It is the DNA national database. DRUGFIRE is a ballistics database that involves putting the image of shell casings and bullets into an automated system. Both systems work on the same principle as the more familiar AFIS fingerprint systems. With AFIS, fingerprint images are put into a computer and stored so someone who comes up with a latent from the crime scene can query the computer file to see if there is a match. DRUGFIRE and CODIS operate in the same manner.



# DRUGFIRE

*Chief Jay Miller  
Forensic Science Systems Unit  
(202)324-9441*

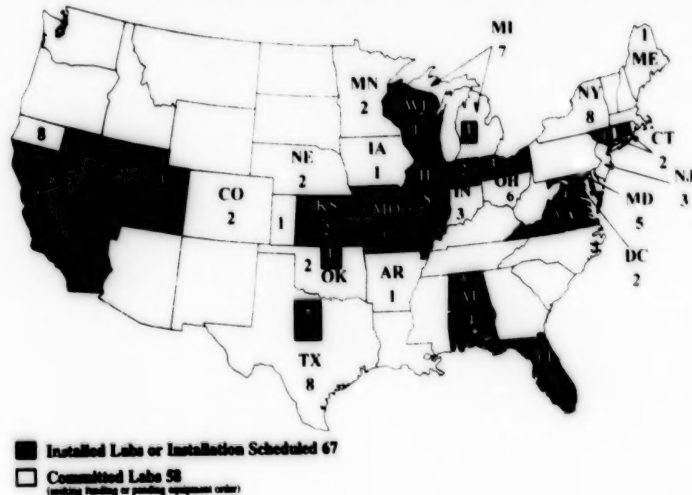
To assist state and local law enforcement agencies in the fight against violent crime, the FBI developed DRUGFIRE, an automated computer technology that links firearms-related evidence (cartridge cases, bullets, and guns) from serial shooting investigations. DRUGFIRE is currently installed, or scheduled for installation, in 67 firearms laboratories, representing 15 networks in 18 states and the District of Columbia. (See map.) DRUGFIRE has linked over 900 pairs of shooting investigations since its inception in 1992.

The FBI is participating in a field test of DRUGFIRE and ATF's Integrated Ballistic Identification System (IBIS) for matching firearms evidence. The test is being managed by the National Institute of Standards and Technology for the purpose of defining specifications for the exchange of images of bullets and cartridge cases between DRUGFIRE and IBIS.

Linkages made by DRUGFIRE are reported daily. In Los Angeles, two police officers were fired on. Neither was hit. Two suspects were arrested and a pistol recovered. Test-fired cartridge cases were linked by DRUGFIRE to a previous carjacking in which an 11-year-old boy was killed. This is a typical example of DRUGFIRE solving what would otherwise have been a "dead-end" case.

In addition to linking serial shooting cases, DRUGFIRE is also a powerful encyclopedia of information for firearms examiners. It includes: (1) the FBI's General Rifling Characteristics File, which produces a list of possible firearms that may have been used in a crime; (2) Email capability; (3) WordPerfect for production of reports at the DRUGFIRE workstation as cases are completed; (4) images on CD-ROM of over 14,000 specimens in the FBI's Standard Ammunition File, allowing ammunition to be traced to its source; and in the near future, (5) images on CD-ROM of over 5,000 firearms in the FBI's Reference Firearms Collection. Once the FBI's ammunition and firearms collections are imaged, additional unique specimens owned by other laboratories will be added to the databases. ❖

## DRUGFIRE™ Installations



**DN:** DRUGFIRE with bullets and shell casings and CODIS with DNA.

**DT:** These systems are going into various state and local laboratories around the country. LABNET is designed to create an automated backbone to make this information available to laboratories all over the country and interconnect CODIS and DRUGFIRE on this information highway.

There are other forensic systems and information we can put on this system in the future. For example, we are

imaging reference collections used in the Firearms Unit. We will be photographing weapons and putting them in the system. We also have a standard ammunition file we want to put in the system so it is available to laboratories and investigators. LABNET provides the information highway between state, local, and federal laboratories to move this information around the country so that if, for example, police in Washington, D.C., recover a shell case from a murder scene, they can query not only their own database, but that of Baltimore to determine if Baltimore has an identical shell case from a crime scene

## Computer Analysis and Response Team

*Chief Michael Noblett  
Computer Analysis and Response Team  
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**T**he widespread use of computers and the rapidly developing technology of computer systems have combined to dramatically increase the volume and complexity of computer evidence. Today, FBI agents routinely encounter computers in cases dealing with health care fraud, child pornography, terrorism, drugs, financial institution fraud, public corruption, and in almost every other investigative classification for which the FBI is responsible.

In most businesses, computers control and monitor production, inventory, billing, and many other functions which traditionally have been important sources of information in investigations. While the "paperless" office has not yet been realized, many businesses have largely replaced paper files with computer storage. Without access to the computer's stored data, vital information can be denied the investigator.

In order to meet the needs of the field for recovery of information stored on computers, the Laboratory Division (LD) created the Computer Analysis and Response Team (CART). Since its inception in 1984, the team at FBI Headquarters has grown from two part-time examiners to a TSL of 18 examiners. Cases have increased from two in 1985 to more than 400 in Fiscal Year 1995, and on-site field support has increased similarly.

Several years ago, the LD recognized that the field required examinations that could most efficiently be performed locally rather than at FBI Headquarters. These investigative requirements led the LD to extend the CART's expertise beyond FBI Headquarters to include field offices. The LD began training and providing equipment to Special Agents in targeted offices. This pilot effort to place forensic computer expertise as close to the investigation as possible has been very successful. Unlike other types of forensic examinations, data recovery from computers is most efficient when it is limited by the logic of the investigation and narrowly focussed on probative and case-related information. In order to provide this focus, it is desirable and, in some instances, necessary to have the forensic examiner and the investigator work as a team in the recovery of information.

Results clearly show that the investigator is best supported with reliable, comprehensive, and timely information by a mutually supporting organization consisting of state-of-the-art forensic capability comprised of computer scientists centrally located at FBI Headquarters and a network of specially trained and equipped examiners assigned to field offices.

CART provides this operational support by assuring that the evidence is both examined and preserved for subsequent use during prosecution of the case. ❖

or known weapon in their system as well. This capability allows investigators to connect incidents occurring in different locations at different times.

Another Laboratory resource that is being used more and more is our Computer Analysis and Response Team (CART).

We want our investigators and prosecutors well-informed on this two-prong program. The first prong involves a unit we created and enhanced in the Laboratory whose mission is to go out to a search site or crime scene and be able to go into computers or other automated systems and extract information. Two-thirds of the cases where we encounter computers are white-collar crime, but computers also are turning up in drug, terrorism, and violent crime cases. Previously, there were only DOS-based systems out there, but now we are dealing with UNIX systems and state-of-the-art computers with greater storage capacity and those that encrypt data. As a second prong of that program, we developed a cadre of field examiners in various field offices who are trained and equipped to perform this task. There are 17 now, but we are increasing that number with a goal of putting an examiner in each field office. They have to be very good at what they do because of many liability issues and technical challenges. Also, CART examiners and field examiners get very involved with investigators and prosecutors in composing affidavits for search warrants to ensure that computer-type evidence is being properly identified and treated in the affidavits. ❖

## **Forensic Science Information Resource System**

*Librarian Colleen Wade  
FBI Laboratory Division*

**T**he Forensic Science Information Resource System (FSIRS) is an FBI scientific and technical library established in 1985 to provide information to FBI Laboratory Division personnel and personnel in domestic and foreign crime laboratories and law enforcement agencies. The available information facilitates evidentiary examinations; the preparation of examiners for courtroom testimony; and the research and development of forensic science knowledge, techniques, and instrumentation. The reference collection consists of approximately 6,000 scientific and technical books. The majority of the collection is housed in the unit laboratories and offices of the FBI's Laboratory Division. The collection has been cataloged and classified, and is accessible via an online catalog that can be searched by author, title, or subject.

The FSIRS serves official government information needs and will deny requests for information to fulfill university course requirements or personal projects. FSIRS is open from 7:00 a.m. to 5:00 p.m., Monday through Friday, and is located in Room 3790 of the J. Edgar Hoover Building, Ninth and Pennsylvania Avenue, N.W., Washington, D.C. 20535. Telephone (202)324-4384, Facsimile (202)324-4323, Internet [cwade@capcon.net](mailto:cwade@capcon.net). ❖



# Directory of FBI Laboratory Division Services

Laboratory Division Front Office	FTS 324-4410/Commercial (202)324-4410
Investigative Operations Support	FTS 324-4452/Commercial (202)324-4416
Forensic Science, Research and Training Center (FSRTC/QUANTICO)	FTS 640-1181/Commercial (703)640-1181
Latent Fingerprint Section (LFPS)	FTS 324-5097/Commercial (202)324-5097
Scientific Analysis Section	FTS 324-4416/Commercial (202)324-4416
Special Projects Section	FTS 324-4220/Commercial (202)324-4220

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Adhesives, glues	4341
Anonymous letters	4430
Arson	4318
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Biological hazardous materials	5436
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Advance examinations	2696
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Operational support	2696
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Wood . . . . .	4344
Word Processing . . . . .	4627
Response Unit (LFPS) . . . . .	5114
Writing instruments . . . . .	4454
Voice Print Analysis . . . . .	(703)550-7931
(Quantico - located in Engineering	
Research Facility of Div. 4)	

**Laboratory Fax Machine Numbers**

Division Front Office, Room 3090 . . . . .	(202)324-1093
Evidence Control Center, Room 3233 . . . . .	(202)324-6489
Investigative Operation & Support Section Front Office, Room 3206 . . . . .	(202)324-1095
Questioned Documents Unit, Room 3206 . . . . .	(202)324-1094
Racketeering and Records Analysis Unit, Room 4712 . . . . .	(202)324-1090
Special Photographic Unit, Room 3449 . . . . .	(202)324-1092
Language Services Unit, Gallery Row (GRB-2) . . . . .	(202)324-3198
Polygraph Unit, Gallery Row (GRB-2) . . . . .	(202)324-2754
Scientific Analysis Section Explosives Unit, Room 3918 . . . . .	(202)324-3407
Materials Analysis Unit, Room 3971F . . . . .	(202)324-4465
DNA Unit, Room 3905 . . . . .	(202)324-8090
Special Projects Section, Room 1B224 . . . . .	(202)324-2926
Forensic Science Research and Training Center Front Office, Room 212A-FS, Quantico, VA . . . . .	(703)640-1394
Bomb Data Center, Room 206-FS, Quantico, VA . . . . .	(703)640-1507



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# Hidden Evidence: Latent Prints on Human Skin\*

*Ivan Ross Futrell, Supervisory Fingerprint Specialist  
FBI Laboratory, Latent Fingerprint Section*



*Ivan Ross Futrell  
Supervisory Fingerprint  
Specialist*

Mr. Futrell is a supervisory fingerprint specialist in the Latent Fingerprint Section of the FBI Laboratory in Washington, D.C.

(Recent research proves that identifiable prints can be obtained from the skin of homicide victims under real field conditions, not just in the laboratory.)

Whether to stop them from fleeing, immobilize them, or dispose of them, murderers often grab their victims. What homicide detective has not wished for

the ability to develop identifiable fingerprints of a suspect from the skin of a dead body? Crucial fingerprint evidence linking the perpetrator to the victim must be right there, but, until recently, attempts to retrieve those prints rarely met with success.

Skin possesses a number of unique qualities that distinguish it from other specimens examined for latent prints. Skin tissue grows and constantly renews itself, shedding old cells that might contain the imprint of an assailant's grip. Its pliability allows movement and, hence, possible distortion of fingerprints. As the skin regulates the body's temperature and excretes waste matter through perspiration, latent prints can be washed away.

In addition to these natural changes, the skin of homicide victims often is subjected to many harsh conditions, such as mutilation, bodily fluids, the weather, and decomposition after death. Further, during crime scene processing, many people might handle a body while removing it

from the scene, which also can destroy existing fingerprints or possibly add new ones to the corpse's skin. In spite of these hurdles, research conducted by the FBI Laboratory's Latent Fingerprint Section—in conjunction with police and medical authorities in Knoxville, Tennessee—proves that latent fingerprints can be lifted from skin if only investigators are willing to try. This article outlines the history and research that led to the development of a workable method for developing identifiable latent prints on human skin.

## History

The FBI has been involved in research on methods to develop identifiable latent prints on human skin for many years. In the early 1970s, FBI scientists reexamined existing methods using cadavers at a major university and the Virginia State Medical Examiner's Office in Richmond, Virginia. Most of these cadavers had been embalmed. To create prints, these researchers applied a coating of baby oil and petroleum jelly to their hands and then touched areas of skin on the cadavers. At timed intervals, they then attempted to develop these latent prints, using primarily the iodine/silver transfer method. This method has five steps: heating iodine in an iodine fuming gun, directing the fumes onto the skin, laying a thin sheet of silver on the skin, removing the silver plate and, finally, exposing the plate to a strong light, which causes the prints to become visible. The researchers developed identifiable prints in this fashion within a time frame that ranged from several hours up to several days after the prints were applied. It should be noted, however, that the researchers achieved these results under ideal laboratory conditions. It was not surprising that they developed

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latent prints composed of artificially introduced oily substances on embalmed cadavers. Yet, those early efforts provided important background data for subsequent research conducted in Tennessee. In 1991, a police specialist from the Knoxville, Tennessee, Police Department contacted the FBI Latent Fingerprint Section to inquire about the FBI's experience and previous research on developing latent prints on skin. His own examination of numerous homicide victims had not produced prints with identifiable ridge detail, even though some cadavers exhibited observable outlines of fingers and palms. Out of these discussions arose a joint research project involving the Knoxville Police Department, the University of Tennessee Hospital, the Department of Anthropology at the University of Tennessee, and the FBI. To develop a consistent and reliable technique for developing latent prints on skin, the researchers established a protocol significantly different from previous efforts. They decided to use only unembalmed cadavers and to place latent prints composed of only natural perspiration and sebaceous (oily) material. They felt that such conditions more accurately replicated field conditions faced by police investigators.

## Research

The researchers first examined the body of a 62-year-old white female who had been dead for nine days. Areas of skin were sectioned into numbered squares drawn on the body. One researcher placed latent prints on the skin by wiping his hand across his brow or through his hair and then touching the cadaver. The researchers then tried to develop the latent prints at timed intervals by employing several methods, including the use of lasers, alternate light sources, iodine/silver transfer, cyanoacrylate fuming (commonly referred to as "glue fuming"), regular and fluorescent powders, specially formulated powders, regular and fluorescent magnetic powders, liquid iodine, RAM, ardrex, and thenoyl europium chelate.<sup>1</sup> Most of these methods developed the latent prints up to approximately one hour after the prints had been deposited. For additional documentation, during the next several days, researchers tested the techniques on other cadavers, but most methods failed to provide consistent results. The one technique that developed identi-

able latent prints most often was glue fuming in conjunction with regular magnetic fingerprint powder. Similar to iodine/silver transfer, this method involves heating glue and directing the fumes onto the skin, then applying fingerprint powder to reveal the latent prints. To test this technique further, researchers glue fumed several areas of skin containing sebaceous latent prints two hours after depositing the prints. Sixteen hours later, they applied various fingerprint powders to those areas. Using a fluorescent powder specially formulated for this testing, they developed a latent print of value for identification purposes. Initially, the researchers believed that the special fluorescent powder provided the key to obtaining usable prints, but additional tests proved that the type of powder did not matter as much as the amount of time allowed for glue fuming.

## Glue Fuming Device

As they continued their research, the scientists realized that they needed an improved method for spreading glue fumes over the skin. The earlier method used—forming an airtight plastic tent over a small area of skin or over an entire body—did not always work. It was impossible to distribute glue fumes evenly over the skin and extremely difficult to confine all of the fumes to the tent. In addition, when they removed the plastic tent at the end of the fuming process, the fumes often forced the researchers out of the work area. To alleviate these problems, one of the researchers, the police specialist from the Knoxville



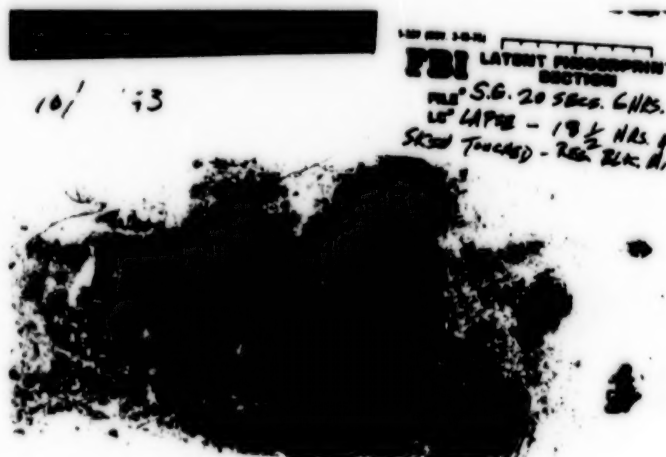
*Portable Glue Fuming Device.*

Department, developed a portable glue fuming chamber. The glue fuming chamber contains a built-in heat source and a small electric fan. Glue is poured into a small disposable preheated aluminum pan and placed in the chamber. After approximately five minutes, the fan is turned on and the glue fumes flow out through a plastic hose attached to the top of the chamber. When set at maximum, the amount of fumes forced through the hose approximates the exhaust from an automobile on a cold day. This device enables the user to control the amount and time of the glue fuming much more easily than the tent method.

Using the new device, the scientists tested squares of skin to determine the optimal fuming time. They tried fuming in increments from five seconds up to two minutes. They obtained identifiable latent prints most often when glue fumes had been applied to the skin for 10 to 15 seconds.

## Powders

In the early testing, it seemed that particular types and brands of fingerprint powders provided the best results. As the research progressed, however, it became apparent that this was not the case. More than 30 brands and several types of powders and applicators were tested. In the end, researchers determined that powder selection



*Lift of latent print developed with regular black magnetic powder.*



*The portable glue fuming device contains a built-in heat source, a small electric fan, and a plastic hose through which the glue fumes blow.*

is less critical than ensuring that the glue fuming process is performed correctly.

Both fluorescent powders and regular magnetic powders produce identifiable prints. With non-magnetic fluorescent powders, the best results are obtained by applying the powder with a feather duster rather than a conventional brush, which generally holds more powder. Too much fluorescent powder tends to overwhelm the latent print and the background. While fluorescent powders work, they do have some drawbacks. They generally cost more than regular magnetic powders; are more difficult to see; and require special light sources, filters, and additional photographic knowledge.

In comparison, regular black magnetic powders produce useful prints and cost much less. They also do not require special photographic skills. Indeed, technology does not need to be complex or costly in order to be effective.

## Field Conditions

Developing latent prints under ideal laboratory conditions proved that prints could be obtained from human skin, but the researchers wanted to make sure that practitioners in the field could obtain similar results. In real life, homicide victims might not be found immediately,



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bodies might be exposed to the elements or other harsh conditions, or they might be taken to the morgue and refrigerated before they can be examined for prints.

To ensure that the process would work, the researchers simulated field conditions by testing cadavers that had been exposed to the elements for several days, as well as refrigerated corpses. They replicated potential time delays that could occur in the field by waiting for approximately 12 hours between the glue fuming (which could be done at the crime scene) and the application of fingerprint powders (perhaps conducted later at the morgue). The results showed that by following proper procedures, investigators could develop identifiable latent prints even under harsh conditions.

## Recommendations

This research indicates that homicide victims should be examined for latent prints whenever investigators believe that the perpetrator touched the victim. If possible, bodies should be examined at the crime scene immediately after the coroner or medical examiner has completed an initial examination and granted permission. At a minimum, the body should be glue fumed at the scene to preserve the prints and help prevent contamination or obliteration of prints when the body is moved.

Ideally, bodies should not be refrigerated prior to examination for latent prints. The condensation that builds up on refrigerated bodies can have adverse effects by washing away the prints, reacting with the glue to distort the prints, or causing the powder to cake, thus losing the prints. Bodies that have been refrigerated should not be processed until the moisture evaporates, roughly several minutes, depending on ambient temperature. A control

area of skin least likely to have prints can be tested to ensure that the moisture has dissipated.

Skin that is warm or near normal body temperature should be glue fumed for only five to ten seconds. Colder skin should be glue fumed for a maximum of 15 seconds. Regular magnetic powders can then be applied. Any identifiable latent prints should be photographed first and then lifted using transparent lifting tape.

## Conclusion

For many years, investigators and forensic scientists have tried to retrieve latent prints from dead bodies, but often the key evidence has been just out of reach. Frustrated, investigators often gave up after several failed attempts. This research proves that with practice, it can be done by those who are willing to try. As it becomes routine for law enforcement to obtain latent prints from skin, murderers who reach out to harm their victims will just be putting themselves within easy reach of the long arm of the law.

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## Endnote

These are commonly used methods for developing latent fingerprints on a variety of surfaces. For more information, see *Chemical Formulas and Processing Guide for Developing Latent Prints* (Washington, DC: Latent Fingerprint Section, Laboratory Division, FBI, 1994).

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# Shortcuts: Easier, Faster, and More Interesting Trials

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**O**ftentimes, the best advice on shortcuts in trial comes from judges. Who would know more about speed and efficiency than someone who is often asked to sit through the opposite? After presiding over countless tedious trials, most judges learn what actually matters during trial and what is merely ritual. Like it or not, most federal judges willingly share their thoughts on how prosecutors can move their cases along. Anger federal judges often enough by being slow, dull, or clumsy, and you can put together a considerable list of tips on how to make trials easier, faster, and more interesting. Fortunately, I have done the hard part for you.

None of the tips I am about to describe are anything new, original, or particularly clever. Anyone who has tried a case or two probably knows them; however, when used in conjunction with one another, these techniques can significantly speed up a jury trial without diminishing the persuasiveness of the government's case. In a recent jury trial, I used almost every one of these techniques. In a trial in which two defendants were charged in a 42-page, 18-count indictment with a Klein Conspiracy against the Small Business Administration, financial institution fraud against an SSBIC, international money laundering, corruptly impeding the functions of the FDIC and RTC, using proceeds from a specified unlawful activity to promote financial institution fraud, and obstructing justice, I put on 56 witnesses (including two experts), introduced the equivalent of four banker's boxes of documents, and played seven tapes, all in only five trial days. The judge went fast, we went fast, and the jury went fast. The defendants were convicted on all counts in a couple of hours.

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## Handling Exhibits

**S**ome lawyers mark all exhibits. While this may be the best way to proceed in a case charging a felon with

possession of a firearm, it becomes cumbersome in white collar cases. In complex bank fraud and health care cases, marking every item is impossible. I have seen experienced prosecutors make themselves look unprofessional in complex cases by groping through piles of exhibits. This does not impress a jury. When you take a big case with thousands of exhibits to trial, you will misplace exhibits. Computers help, but the computer that can find a document placed in the wrong stack has not been made.

And though rummaging through separately marked exhibits, occasionally losing one or two, is bad enough, describing all those separately marked exhibits for the record makes matters ten-times worse. There is nothing persuasive about reading off a list of numbers for the court while introducing exhibits. Inevitably, the more numbers you have to remember and refer to, the more likely you are to forget and fumble. Constantly referring to those numbers breaks up your examination; costs you momentum; and, more than likely, loses the jury's attention.

I once drove a judge so crazy by calling out litanies of exhibit numbers that he told me to re-mark all my exhibits and make every related document a single exhibit. If a bank could keep track of all these records without putting different numbers on them, then so could the court and the jury. It made sense. Most documents have their own organizational scheme and individual identifying marks, dates, or formats. They typically need only be grouped by category, allowing the documents themselves to provide the organizational framework.

I followed this judge's advice and now mark as many documents as I can as one exhibit. I go to extremes, sometimes marking entire boxes of documents as a single exhibit. I do this even when the box contains the most important exhibits in the case. For example, if you have three year's worth of a person's bank records, mark them Exhibit 1. Bind them in a folder or loose-leaf binder and use dividers for the years and the months. If you have several accounts from the same bank, and they pertain to



the same individual (even if corporate and personal accounts), mark them as 1A, 1B, 1C, and so on, but try to keep them in the same binder. If you have dozens of victims, each of whom must testify to introduce certain records, you should still place all their exhibits in the same binder, even if you must number the exhibits separately. Put them all in the same notebook, using dividers to keep each witness's exhibits separate. Keeping documents physically organized in proximity with one another, especially when they belong to the same category, makes handling and keeping track of them much easier.

Try being creative when numbering exhibits. For example, there is no reason why you cannot add the victim's names to exhibit numbers, marking them as 22Chriswell, 23Baker, and so on. When using dividers to separate the exhibits, write on the dividers to clarify the date and source of the exhibits. If a folder contains bank records, write "bank records" on the cover of the folder. All exhibits should be packaged and marked so they make sense by themselves; when a juror picks one up, he or she should be able to tell what the exhibit is without having to remember what you said during trial and without having to refer to an exhibit list. If you follow this approach, you will find that your case is easier to present to the jury.

Just because the documents are bundled together does not mean that you cannot emphasize particular exhibits. To refer to the important documents in a bundled exhibit, use post-it flags. Stick a flag on the document you wish to have the witness review, number it, and make a copy of the document for your witness folder. (Be certain to number your copy so that it matches the post-it flag.) When the witness is on the stand, refer him or her to the flags, and then describe the document in a leading manner to be sure he or she has turned to the right page. (This is permissible under Rule 104.) If the defense objects to the use of the flags, argue to the court that having numbered flags speeds up direct, aids the witness, and ultimately makes it easier for the jury to find the exhibits the government believes to be most relevant.

To further speed things up during trial, place all exhibits on the witness stand before the witness begins testifying. This saves you from having to walk back and forth with the exhibits when you are questioning the witness. It also allows you to panic (in case you cannot find an exhibit) before the jury, judge, and defense begin focussing their attention on you. You should also

announce to the defense and the court which exhibits you plan to use with the next witness. This allows the defense and the court time to prepare, thus saving time and enhancing your image as a fair prosecutor.

As obvious as this technique sounds, I have had many experienced prosecutors scoff at this practice. Apparently, some prosecutors believe that lumping exhibits together will detract from the significance of specific documents. Somehow the documents will not be properly emphasized to the jury if they are not individually marked. Unfortunately, since these experienced prosecutors often cannot decide whether one document is truly more important than another, they end up marking almost every document. No matter what you believe, there is no dispute that a case with 60 exhibits sounds much simpler than one with 600. I have used this technique for years and have yet to have an objection against this labeling technique sustained. This is probably because the defense thinks I am failing to properly emphasize the individual documents.

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## Transparencies

Jurors remember much more about a case if they see **J**and hear the evidence. Studies have shown that jurors retain 30 percent of what they hear and 75 percent of what they see **and** hear. Accordingly, if a document is important enough to ask individual questions about, then you should also make a transparency to show to the jury while you ask the questions. Transparencies work better than copies because you control when the jury views the document, and because it takes less time to put a document on the overhead projector than it does to pass out copies to the jury. Transparencies can be made on almost any photocopier; in fact, they are quicker to make than photocopies because you only have to make one instead of 16 to 20. (Remember, you cannot pass out the copies (or show the transparency) until after the exhibit has been admitted into evidence.)

Once you begin using transparencies, you will find that your direct moves faster, jurors see and learn more, and you have to ask fewer questions to make your point. For example, instead of directing the witness's attention to the bottom half of the document, the third paragraph, to the sentence beginning with the words "I promise to

pay this loan out of the proceeds of my new patent," you simply point to the sentence and say, "this sentence about the patent, did that matter to you in deciding to make this loan?" You will find the jury leaning forward and actually reading ahead of you on letters and other self-explanatory documents, consuming the entire document, and then sitting back to wait for your questions. Consequently, start your questioning by asking harmless questions about the document's format, or wait a few seconds to let the jury get a good look at the transparency. Once the jury has had enough time to read most of the document, begin asking about the significance of its contents. Be sure to leave the last transparency on the overhead as you continue to question the witness. Use colored paper as a backing on the transparencies.

Ideally, your witness will initially refer to the exhibit in front of him/her but, as the testimony proceeds, will begin answering questions by referring you to the overhead. After a time, your judge and the defense will also begin following you and the document on the overhead. Although most courtrooms are not arranged so that you can simultaneously show transparencies to the judge, jury, and the defense, at least try to make your projection visible to the jury and the judge. Give the defense copies of your transparencies to look at while you show them. In most cases, the defense moves around so they, like the judge and jury, can see what is on the screen.

Once you get accustomed to working with transparencies, you can use them to quickly contrast documents with one another, or to remind the witness of a question you asked earlier in direct. You will find yourself talking less and showing more which greatly speeds up your case. The most fun you can have with transparencies, however, comes during cross examination. In particular, when impeaching with inconsistent statements, the ephemeral nature of the spoken word cannot compete with the concrete reality of print. Even if the witness testified before the Grand Jury, it is far more devastating to impeach by showing the jury the transcript, in addition to asking whether the witness made the offending comment before Grand Jury.

Although using transparencies in document cases can greatly expedite trial, you will defeat the purpose if you make transparencies of every document you think might be relevant. Be selective and make transparencies of only those documents you think are important to the jury.

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## Copies to All

Some may do this as a regular practice. Some, however, will be horrified at even the prospect of doing this. To expedite the trial of complex, document intensive cases, give pre-marked copies of all your exhibits to the defense and the court one week before trial.

Heresy? Recklessness? It may, initially, seem absurd to give one's entire case to the defense a week before trial. In particular, if you are the type who tells the defense nothing before trial, the type who enjoys handing over Jencks material only after completing direct examination, then this practice will certainly not appeal to you. However, if you're that kind of prosecutor, then you probably **should** give copies of all your exhibits to the defense before trial. Why? Because if you do, you will not only eliminate much of the pointless delay that comes from defense counsel's having to (or pretending to) check exhibits when you try to introduce them, but you will also defeat most claims that you failed to provide discovery.

First, by giving the defense everything you plan to introduce a week before trial, you weaken any claim of surprise. How can the defense claim they have not seen a document when you gave it to them in discovery **and** as a pre-marked exhibit? The very act of giving over your exhibits a week before trial guts most misconduct arguments. (It also ensures that you really did provide everything.)

In addition to solidifying your reputation for fairness to the court, turning over copies of marked exhibits to the defense a week before trial will also impress them. (This does matter.) The defense will see that since you gave them the exhibits in advance there is no real point in zealously opposing their introduction. Try it and see if it works. If you like, you can ask for stipulations, using the exhibit list and your copies as the basis for your request. (I think it usually takes less time to introduce an exhibit than it does to get a stipulation. In any event, always let the court know that you have asked for stipulations when the court asks for a time estimate in your case; e.g., "one week" if the defense accepts the stipulations, "two weeks" if they do not.)

The biggest advantage you gain by providing copies of marked exhibits to the defense is that you can now justify giving a copy to the court. If the judge has a copy of the exhibits, she/he is more likely to follow your case

during trial. Consequently, you are more likely to get correct rulings. A judge who has your exhibits in her/his hands is also less likely to be swayed by opposing counsel's dramatic characterizations of a document. Moreover, if you have simplified your exhibits by numbering and organizing them in a manner suggested by the documents themselves, then the judge will see that the documents are business records, official records, or whatever they purport to be.

By providing copies of all exhibits in advance to the court and the defense, you will appear to the jury to be a teacher rather than an advocate. Each time you are asked to help the defense or the court to find a document, each time you tell the court and the defense which exhibits it should pull for the upcoming witness, you will seem open, direct, and didactic. The jury may infer that you are teaching them and the defense about the case.

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## Expert Witnesses at The Beginning of Trial and Summary Witnesses

Experts can be extremely useful in explaining what you are about to prove. In some cases, in particular those dealing with abstruse government agencies or esoteric government programs, using an expert may be the only way to prove your case. An expert can quickly give background information about the subject of your case and inform the jurors of what to look for in the upcoming testimony. Once jurors know what to listen for, you can ask fewer questions.

For example, suppose you have charged a Klein Conspiracy against a fringe group that has set up its own secret, numbered banking system to impede and impair the functions of the Internal Revenue Service. What is wrong with or illegal about having numbered bank accounts, and why would the IRS care if you had one? You can cover some of this in your opening statement but, in most cases, you cannot ask the individual fact witnesses, unless they are cooperating defendants, *why* the defendants did the things they did. (Objection! Calls for speculation!) Instead, why not call as your first witness an IRS agent familiar with the investigatory functions of the

IRS to testify as an expert? Ask how the IRS investigates criminal cases. Ask how secret, numbered bank accounts would impede such an investigation. Then, once you begin calling witnesses to show what the defendants actually did, the jury will be in a much better position to understand the significance of their testimony.

I use expert witnesses whenever possible. Most recently, I called an expert from the Small Business Administration to explain what the Administration did and, specifically, what a Small Business Investment Company was and how they were funded. In less than 45 minutes, the expert taught everyone what the SBA does, what an SBIC is, what a specialized SBIC is, and how the SBA funds these entities. To move things even faster, I had the expert introduce all the SBA records, since he was familiar with how the SBA created and maintained them. Now the jury was ready to hear evidence and see documents about how the defendants conspired to defraud the SBA.

In a trial in which a New York attorney was charged with money laundering, I used an expert who was an attorney with the New York Bar's Committee on Professional Standards. This expert testified about the New York rules governing attorney trust accounts. To be safe, I asked him only hypothetical questions, rather than for his opinion about the facts in the case. I knew what his opinion would be—that the attorney was conducting improper financial transactions with his trust accounts that looked an awful lot like money laundering—but I took a conservative approach. However, according to the rules of evidence—Rules 702 through 705—I could have used the expert to opine about the very facts in the case. In this particular case, my only alternative would have been to introduce the attorney trust-account rules themselves and argue how they applied at the end of the case. By then, however, it would have been too late.

Of course, if you have ever tried a *Driving Under the Influence* case against a solid defense lawyer, or if you have done civil trials, you have learned the hard way that hypothetical questions can kill your case. Accordingly, before using an expert, be sure to acquaint yourself with the rules; become familiar with what is permissible on cross examination; and, above all, be sure to prepare your witness accordingly. Although you may encounter a defense counsel that presents poorly prepared experts or is inept or unartful with cross examination, always have a



practiced and prepared special agent that can deliver a blow to the defense.

Using summary witnesses (not necessarily experts) to introduce voluminous exhibits is another great way to expedite trial. There are hundreds of articles available on how to do this. Just remember: if you cannot make up your mind about which exhibits in a room full of seized documents should be introduced, make them all available to the defense (pursuant to Rule 1006), and have your agent summarize what he found. You can also use this technique to introduce summaries of lengthy tapes. Introduce all the tapes, but present only a summary. Too few prosecutors use this tool. Most judges love it. If you cannot resist showing the jury the magnitude of your evidence, take a picture of it and show them that. A room full of drugs is impressive. A room full of documents is boring.

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## Summary Exhibits Instead of Charts

Federal prosecutors love charts and graphs. Some even display them as trophies. Unfortunately, many charts never make it into evidence at trial, primarily because the defense objects to the color, the graphics, the icons, or the accuracy. Personally, I believe that judges exclude charts just to see the prosecutor's expression when he learns that his chart will not be shown to the jury. Whatever the reason, the countless hours that go into making the charts are often wasted. I found, however, a simple and clever substitute for the chart. During a probation revocation hearing in California on a check kiting case, I saw a judge cross-examine the defendant using an incredible exhibit. The judge took copies of the seven most relevant documents from the trial and stapled them together as one exhibit. He then skewered the defendant with it. Since then I have been making my own summary exhibits in the same manner. I make copies of the best exhibits introduced at trial and put them in a book for the jury.

This idea is so obvious that it may seem improper. Simply make copies of the documents that are most pertinent to a particular count or overt act, organize them so they follow the indictment, and index each exhibit so it refers to the exhibit from which it was taken. Mark these

summary exhibits so they match the charges in your indictment. For example, if you have charged substantive laundering in count five, make exhibit five the collection of copies that best shows the laundering transactions charged in count five. If you have 52 overt acts in the conspiracy (and the conspiracy is charged in count one), pick the 52 best documents, preferably one for each act, and label the collection as exhibit one. At the end of your case, call the case agent (or whoever created the exhibit) and introduce the collection into evidence.

Defense counsel hate these summaries, but I think juries love them. I think juries use these exhibits and the indictment to steer through the sea of documents you have introduced at trial. I believe this because I use these summaries in the very same way, and so do others working on my trials. Imagine how daunting it must be for a juror to have to go back through all the exhibits to find those documents that, individually, prove the elements and overt acts in the indictment. Even if the exhibits were individually marked, organized, and stacked for the jury, this would be an imposing task. In most cases, it takes days for the case agent to get the summary correct. However, summary exhibits made from photocopies of the most pertinent exhibits do this work for the jury. These exhibits are truly "roadmaps" for the jury. These summaries probably do more to speed up deliberations than they do to speed up trials.

These photocopy summary exhibits help more than the jury. By creating these exhibits, the prosecutor is forced to focus on those individual documents that prove the core overt acts and elements of the case. He thus learns what is essential and what to leave for argument. He learns what to highlight during examinations and what to skip over. He is forced to check his exhibits to make sure they contain the documents necessary to prove his case, and, further, that he has described them correctly in the indictment. Indeed, it is difficult to tell who this exhibit helps more, the jury or the prosecutor.

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## Trial Briefs

If you wouldn't give the other side copies of your exhibits a week before trial, including a summary exhibit, you undoubtedly would not write a trial brief that outlines your entire strategy to the defense and highlights

problem areas in the government's case. How can exposing yourself like this in a trial brief speed up your case? It begins in two ways: it forces you to condense your facts into a pithy presentation, and it persuades the court, in advance, that you should prevail, thus saving you from having to do as much during trial.

Think of this for a minute: you may legally and ethically present the judge with a persuasive document which openly and honestly discusses your facts, explains why your evidence should be admitted, and which judiciously presents your legal arguments—all before the defense can object, complain, dispute, or disagree. A prosecutor has to have a good reason for passing on this opportunity. If the judge knows where you are going in trial and the issues before they arise, she/he will be quicker to rule, more prepared, less likely to hear time-consuming argument by the defense, and more likely to rule correctly.

You may think that writing a trial brief takes too much time, and trial preparation time is precious. If you don't plan to deliver an opening statement, use jury instructions, and have never researched the evidentiary issues likely to arise in your case, then yes, writing a trial brief will be a lot of work. But since most people routinely do these things, all they need to do is write down their opening statement, condense it, and then make it appear fair and objective. Add to this the elements of the charges, warnings about unusual evidentiary issues, and case law supporting the admission (or exclusion) of questionable exhibits or testimony. (In case you have not noticed, this is trial preparation.) Most courts limit trial briefs to 20 pages. Keep it under this mark.

If you go through the exercise of writing a trial brief in less than 20 pages, you will find that you have probably just cut your case in half. You will find yourself giving better, more organized opening statements. You may find that probation uses your trial brief as the model for its presentence report. You may also find that the press uses your trial brief to report on your case. Your trial time will be reduced because you will spend less time arguing to the court. Finally, you will have made important decisions about what is important in your case.

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## Learning to Shut Up

**O**ne of the most difficult lessons to learn is when to sit down. Watch experienced lawyers in court and you

will see that they say far less than green lawyers. I remember watching experienced drug prosecutors at status conferences as they placidly endured threats, insults, and falsehoods about their alleged failure to provide discovery. Unless specifically asked by the court to do so, the experienced prosecutors would say nothing in response to the attacks. Inevitably, the prosecutors prevailed. Their failure to react proved to be a powerful rebuttal to the histrionics of the defense.

Silence is not only effective, it is also efficient. Obviously, the less you talk, the faster the case will proceed. Not only do your speeches waste time, they trigger opportunities for the defense to respond, thus wasting even more time. Accordingly, don't worry about getting the last word; worry about winning. Do not be tempted by redirect or recross; avoid them unless they are critical. If you follow the steps I have outlined thus far, you will be well on your way to talking less. Nonetheless, here are some ways judges have invited me to say less.

**Never respond to an argument only to defend your honor.** Respond only if you are losing and only if you think it will do some good. If the judge has read your pleadings and intends to rule in your favor, but you nonetheless still wish to be heard, don't do it. Sit down!

**If a judge has read your pleadings but nonetheless wants to rule against you, you are probably cooked, so don't bother arguing.** If you sense that the judge is against you and that you are about to lose, don't cement the judge's sentiment by arguing about the point. Some defense lawyers can get a judge to change his ruling by filibustering on a point, but this approach rarely works for prosecutors. Instead, try asking the judge if you can submit authority on the point at the next convenient juncture. If you guessed wrong and the judge was going to rule in your favor, he probably will not make you retrieve any authority. If he refuses to allow you to get additional authority and rules against you then and there, chances are your oratory would not have saved matters. Most judges, however, will hold off on their rulings and allow you to get additional authority. If you find cases on point, make copies for the defense and the judge and highlight what the judge should read. Do not write a brief unless a judge makes you. Wait until the judge reads the cases before asking to be heard. If the cases say you should win, you probably will win. The judge is not reversing himself; he has only postponed making the correct ruling. This approach may inconvenience a witness

or two (by requiring that they be recalled), but the rest of your case can proceed in the meantime.

**Admit when the other side is correct before it has to argue.** In other words, agree before the other side argues. This saves time and makes you look fair. It establishes that you know the rules and that you do not argue when you are wrong, only when you are right. Look for points to give away. Some disagree with this point, feeling that if you admit to the court that the defense is correct, you enhance the defense's credibility. I say leave petty argument for the other side. Be more like the judge: make decisions about the evidence. Admit that the defense is correct (if only for the first time). If you follow this rule, the judge is more likely to side with you when you really need a point. It will also save a tremendous amount of time.

**Do not say, "May the record reflect;" instead, make it reflect.** Nothing sounds worse in court than the attorney who says, "May the record reflect that the witness has marked exhibit 4B with his initials." Instead, direct the witness to mark the diagram with his initials. When he has done so, ask "Did you do it?" The witness responds, the record is made.

**Avoid boring foundations.** Use them on the first witness to show that you know the drill but taper off as the foundation testimony gets to be redundant.

**Try to argue during the breaks.** There is a senior judge who is notorious for not allowing lawyers to waste the jury's time by arguing law and the admissibility of evidence when the jury is sitting. He allows no sidebars. All points must be brought up during lunch or after hours. The judge is usually short tempered with people who keep him from lunch, and is even worse with lawyers who keep him from leaving at night. As a consequence, neither side argues much, and when it does, it makes its point and that is that.

Try the same before other judges. Obviously you cannot ask a judge to adopt your approach to his courtroom, but you can politely introduce him to the practice. If the defense wants a sidebar, ask the court if, instead, you can proceed into another area and take the matter up at the next break. If it works, try it again. Let the court and the jury know that you want to try the case, not whisper at sidebar.

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## Be Careful Not to Over-Prove Your Case

What does this mean? Have you ever heard of a juror complaining after a trial that he really wanted to vote guilty, but thought that the prosecution introduced too much evidence of guilt, and so had to go the other way? Do jurors have some secret threshold of persuasion beyond which they reverse their thinking? If you browse through Aristotle's *Rhetoric* and your other treatises on persuasion, you will never find this concept.

I think judges mean that the prosecution is boring the judge and confusing the jury by spending too much time proving things that are not in controversy. Maybe the judges are trying to tell us that the jury may believe that an issue is, in fact, in controversy because we have spent so much time dumping in evidence on the topic. This could be true.

Whatever the judges really mean, some wisdom can be squeezed from this admonition. If you focus on proving what is in controversy (without missing the elements of your crime), you will decrease your trial time to a fraction of what it would otherwise be. If the defense begins to put up a defense based on a perceived but fictional weakness in an element in your case, only then should you begin to highlight that element to turn back the defense. If the defense is not contesting a point by opening statement, cross-examination, or otherwise, do not waste time over-proving it—unless, of course, it is the heart of your case.

You can further streamline your case by using rebuttal. Many prosecutors waste trial time by preempting defenses. In fact, jurors are often more impressed when a defense has been thoroughly swatted down than when the prosecution politely suggests it and then disproves it. In the latter situation, the jury wonders why you bothered, especially if the defense never raised the defense in the first place. Accordingly, if you know a meritorious defense is coming, preempt. Otherwise, wait for rebuttal. Be sure to know your judge and the rules she/he applies to rebuttal so you do not find yourself cut off. Always let the judge know that your case is moving quickly and that much of what you thought would have to be put in your case-in-chief can be postponed until rebuttal, if necessary.

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# Quicken Adds Efficiency and Accessibility to Complex Transaction Litigation

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and Special Agent Kevin Hanff, Internal Revenue Service, St. Louis Office*

***United States v. James G. Freeman, et al.,  
S1-4:95 CR 186 JCH (E.D. Missouri)***

When Special Agent Kevin Hanff joined the prosecution team on the *Freeman* case, a nationwide Ponzi scheme prosecution, the challenge was clear: How to quickly and thoroughly organize 30 different bank accounts comprised of approximately 8,000 transactions and be ready for trial in just four months. Organized and presented well, the financial evidence needed not only to prove the Ponzi nature of the defendants' investment scheme but to show how the investors' moneys were misused for personal benefit. Left disorganized or with gaps in the information, the defense could exploit the financial evidence which could cripple the entire prosecution.

Hanff's suggestion took the entire trial team by surprise: he wanted to use Quicken, a Windows-based, personal and business financial organizer software program by Intuit. Initially, both Assistant United States Attorneys

on the case were skeptical because they had used Quicken at home for family finances and thought it was not sufficiently sophisticated for presentation in federal court. Moreover, both Assistants were familiar with case agents working with wide-ranging, expensive programs like RBase, Dbase, and Lotus. Could a \$30 product tackle the problems this case presented?

In the end, Hanff prevailed. As he began entering the financial information into a Quicken database, the advantages became apparent. Most noticeably, Quicken's ability to generate reports with a few clicks of the mouse allowed the team to continuously identify accounts and specific items not yet produced by the numerous financial institutions involved. Once these gaps were identified, the supplemental records produced could be input quickly and other reports already created were automatically updated.

Quicken allowed the team to collect the information on at least two levels. First, Quicken is extremely good at tracking hard data from bank records. After an initial input run entering the statement information, the Agent can then review and enter the information from the payment and deposit items to complete the transaction picture. The program makes reconciling the accounts—and thus rechecking data—extremely simple. After entering this information, the computer contains a complete picture of the banking activity, collecting all the information the bank stores in several different locations.

Second, Quicken allows for categorization of transactions, allowing the trial team to organize the information according to its theory of the case. In complex cases like *Freeman*, this organizational level is critical to maintaining current analysis of the evidence as it is entered. For example, categories were set up for the lulling "interest" payments the defendants sent to the individual investors

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If your judge makes an ominous statement along the lines of, "we'll see," you may want to change your tactics.

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## Going Fast Works

Most complex cases can be distilled down to a core of fraud or some other villainy. If we try, we can present this core in very little time. Some judges will let us do it, others will not. Others are so traditional that they oppose any innovation. Still, if you try the foregoing techniques and add them to your other tricks, your trials will be more interesting for the jury. ♦

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(sub-categorized by investor name), for the "commission" payments sent to the sales agents (also sub-categorized), and for the "salaries" and office expenses paid by the defendants out of the dirty bank accounts. With these categories thought out ahead and entered along with the banking data, producing immediate reports to answer the Assistants' questions became easy. And with Quicken's ability to search and replace, any reconsideration of how to categorize a type of payment could be implemented in seconds—and every relevant report was immediately updated as well. By structuring the organization on two levels, the program allows the analytical benefits described above without corrupting the raw bank transaction data that is so important to case preparation.

A significant benefit of using Quicken is the ability it provides to less computer-oriented attorneys or agents as a tool in organizing the prosecution. In the *Freeman* case, both attorneys had used earlier versions of Quicken at home and were able to learn the new version quickly for purposes of reading and analyzing the information it contained. Even beginners would find using Quicken intuitive, given its similarity to a checkbook. So that the rest of the trial team could answer questions and perform analyses without interrupting data entry, a second copy of

the program was installed on a different computer and updated almost daily with new data. Not only did this keep the Assistants from interrupting the Agent with each question about the bank accounts but the *Freeman* team found that it fostered creativity in the analysis and planned presentation of the case.

An important additional benefit is Quicken's efficiency. It includes several features that significantly reduce the number of keystrokes required to enter data; for example, it immediately memorizes particular payees or even entire transactions, allowing repetitive entries to be made with just a couple keystrokes; dates can be changed incrementally by hitting just the "+" or "-" keys; and it allows three-dimensional data tracking, i.e., a transfer from one account to another, entered only on the first account, automatically appears on the other account without further keystrokes.

The trial team's initial concern that the software was just for "personal" use was quickly alleviated. Reports generated and the information delivered by the software were certainly as accurate and professional in appearance as other software packages used by this office.

And the *Freeman* case was a success—all eight defendants in the case pleaded guilty. ♦

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## Collecting or Developing Evidence: Recent Developments by Law Enforcement Agencies

*Criminal Division Chief Leo M. Dillon  
Western District of Pennsylvania*

### **"Sneak and Peek" Search Warrant: 14-Month Delay of Notice re Execution of a Search Warrant in Public Corruption Investigation**

**I**n late April of 1992, the Pittsburgh Office of the FBI received confidential informant information that cases were being "fixed" in the Allegheny County Common Pleas Court of Statutory Appeals, and that courtroom per-

sonnel there maintained a notebook which listed the cases to be fixed. It was determined that, in order to pursue the investigation, use of undercover tools such as submission of contrived cases and/or wiretaps was necessary. In order to develop predication for these techniques and preserve essential evidence, it was necessary to examine the notebook. Standard search warrant procedures would have made further undercover investigations impossible, however, since Rule 41(d) requires that a copy of the warrant and inventory receipt be left at the premises searched.

Relying on Second and Ninth Circuit precedent which authorized brief delays of notification regarding search warrants for premises concerning drug evidence [*United States v. Villegas*, 899 F.2d 1324 (2d Cir. 1990), *United States v. Freitas*, 800 F.2d 1451 (9th Cir. 1986)], the government obtained District Court authorization for covert entry and delayed notice, initially for a period of seven days following execution of the warrant. On June 2, 1992, the FBI searched the courtroom and found, copied, and replaced the notebook containing a list of fixed cases (a number of which were "to be found guilty") covering the time period from December 1990 to July 1992. Thereafter, on 19 subsequent occasions as required by the Court, the government provided documentation demonstrating the need for continued delay of notification in order to conduct the undercover investigation. Following eight months of bugs and wiretaps at that location, notice of the original search warrant was provided to the Statutory Appeals Judge on July 29, 1993, after execution of a second search warrant recovered the notebook (which now covered the period from December 1990 to July 1993).

Three court employees were subsequently indicted on charges of conspiracy to commit mail fraud (18 U.S.C. § 371) and conspiracy to violate civil rights (18 U.S.C. § 241). After a suppression hearing in September 1995, the Court found that the covert search warrant was an extra-ordinary measure "which should not be granted as a matter of course" but which was justified in this instance since the government's need to conduct a covert search outweighed the invasion to the defendants which the search entailed. The Court also found that the surreptitious entry did not violate the common law knock and announce rule or 18 U.S.C. § 3109, since surveillance prior to entry had indicated no one was present therein. Finally, the Court adopted the reasoning of *Villegas* and determined that Rule

## Seminar on Search Warrants in Complex Investigations

The United States Attorney's office for the Western District of New York is planning a September 1996 seminar for state, local, and federal investigators entitled, "Search Warrants in Complex Investigations," a comprehensive checklist for pre-warrant planning and execution, utilizing and combining the best of what is presently being used by various federal and local agencies. If you are interested in finding out more about the seminar, please contact Assistant United States Attorney Martin J. Littlefield, Western District of New York, (716)551-4811. ❖

41(d) was not violated by the delayed notice, since the government's successive requests for delay in notification provided the judge with new information regarding the progress of the investigation and the need to further delay notice of the search.

On January 22, 1996, following a three-month trial, all three defendants were convicted on both conspiracy counts. On April 12, 1996, each defendant was sentenced to a term of imprisonment of 33 months.

This case could not have been made without the unprecedented (in the Third Circuit) use of a "sneak and peek" search warrant. The anticipated appeal may provide some Third Circuit authority for the use of this technique. ❖



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# Cyberbanking and Cyberfraud\*

*Assistant United States Attorney Donna J. Everett  
ACE Coordinator  
Central District of California*

Consumer cyberlending and cybercash present a host of new problems for law enforcement and the investigation and prosecution of financial crimes. The emerging technology of electronic on-line banking and commerce raises issues affecting the safety and soundness of financial institutions and the ability to prosecute cybercrimes. Understanding the technology behind these electronic transactions is essential to recognizing and prosecuting cyberfraud. Three emerging technologies include the electronic payment systems, Automatic Loan Machines (ALMs) and Smart Cards.

Electronic payment systems for the Internet deliver payments between customers, merchants, and banks. The new form of cybercash incorporates encryption and digital signatures, giving consumers a "digital wallet," and merchants a conduit to Internet payment processing. Customers authorize payments out of their digital wallet. The payments are signed and encrypted, sent to the merchant, and eventually back to the merchant's bank for processing.

ALMs, anticipated to be in use during 1996, can process an unsecured loan application in 10 minutes. The customer stands before the ALM and "fills out" the on-screen loan application with an inkless pen. The ALM confirms the applicant's information with electronic hookups to various credit services and other information services. Upon approval of the loan, the funds are electronically transmitted to the customer's account. The ALM is similar to the ATM in that it is mobile and easily set up in any location. The ALM benefits are that it is fast and accurate, and the ALM loan process is gender and race neutral.

The "smart card" is similar to a credit card and can be used like cash. Electronic cash smart cards can download value onto the card from a telephone. The Smart Card contains a central processing unit (CPU) which

stores and secures information. This "intelligent" smart card can make decisions and offers a "read/write" capability so that new information can be added and processed. Monetary value can be added and decremented with each transaction. The "memory" smart card is primarily an information storage card that contains stored value which the user can "spend" in a pay phone, retail or vending transaction. Smart cards are more secure than the magnetic stripe cards because of the integrated circuit chip.

While the technology advances, it is anticipated that cyberbanking and cybercash will create a host of new fraud prevention and enforcement problems for law enforcement and the banking industry. Smart cards present the potential to lose evidence in drug transactions and other crimes—when the money is sent into cyberspace. Other issues include the need for industry standards on hardware and software products. What types of financial services will be provided by the various entities and merchants entering this new field? How will these new technologies affect the safety and soundness of financial institutions or consumer privacy? Does the Statute of Frauds apply when a digital signature is used? And a very important question, how do we trace the cybermoney flow and seize assets?

Possible solutions to the many issues surrounding cyberbanking and cybercash are encryption technologies, the promulgation of appropriate statutes and regulations, and consumer education on security and safety. Cyberbanking investigations and prosecutions present the need for new and improved law enforcement techniques and coordination. Most important, acquiring technical expertise and familiarity with these emerging electronic forums will prepare us to investigate and to prosecute cyberfraud successfully. ❖

*\*Article reprinted from the ACE Reporter Newsletter, March 1996.*

# The Interpretation of Blood Spatter Evidence

Ed Hagen

Office of Legal Education,

Executive Office for United States Attorneys

This article is a short version of a longer work that will appear in the next edition of *Violent Crimes*, scheduled for publication in June 1996 as part of the Office of Legal Education Litigation Series.

Information gained from an expert examination of the blood stains at a crime scene is useful at every phase of the case—determining the identity of the perpetrator, marshalling information for a successful interrogation, putting together a government case, and defeating defenses.

Experts can provide opinions on:

- The directionality of the object that produced the blood stain (e.g., the angle a club was swung);
- The velocity of the object causing the blood stain (e.g., whether it was a club or a bullet);
- The number of shots or blows;
- The position of the origin of the blood stain at the moment of impact, and subsequent movements (e.g., whether the victim was standing or sitting);
- The position and nature of objects masking the target;
- The identification of objects from the shape, size and edge detail of the outline they leave behind on the target surface;
- The timing of movements (e.g., whether bloody footprints occurred during the struggle or after the homicide);
- Whether the crime scene has been tampered with (e.g., efforts to wipe up blood).

Intelligent discussion of blood stain evidence requires consistent use of certain key terms. The evidence itself is normally referred to as blood **spatter** (not splatter). The point where the body receives the blow causing the blood is the **impact**, and the place where the blood stain is found is called the **target**. When a blood stain is produced by the movement of an object covered with blood (e.g., a swinging knife or club), it is called **cast-off**; when a blood stain is caused by contact between the bloody object and the target (e.g., a bloody handprint), it is called a **transfer**.

The speed of the object causing the impact can be deduced from the size of the individual blood spatters on the target. Very small, aerosol (misting) droplets are the

result of high velocity blood spatter from a gunshot. Medium sized droplets (1 to 4 mm) are caused by medium velocity blood spatter, which in turn is the result of a medium velocity impact; e.g., from a swinging club. Dripping blood results in low velocity blood spatter, and can be deduced from large droplets.

It is possible to determine the directionality of the blood from the patterns of the shapes of the spatters and their size and number. Blood traveling at an angle to the target will produce a teardrop-shaped spatter, with the tail pointing in the direction of travel. Skilled criminalists may be able to triangulate the position of the impact (point of convergence) by studying the pattern of many spatters on the target, generally by using strings. **PRAC-TICE TIP:** Some prosecutors explain this to the jury with the phrase, "you can't throw curveballs with blood."

Most high velocity blood spatter will come from exit wounds. Blood spatter from entrance wounds, often called blowback, does not occur unless the firearm is in contact or near contact with the target at the time of the shot.

Since the surface characteristics of the target greatly influence the edge characteristics of the spatter, experimentation is very useful in sharpening the conclusions to be drawn from evidence. These patterns and conclusions are not, however, affected by the age, sex, alcohol or drug use, or the disease state of the bleeder. The patterns are normally not affected by temperature or humidity.

Expert opinions on blood spatter should be admissible under Fed. R. Evid. 702. *See United States v. Phillip*, 948 F.2d 241, 248-49 (6th Cir. 1991); *Mustafa v. United States*, 22 M.J. 165 (U.S. Court Military App. 1986). The preparation of blood spatter experts for court is similar to the preparation of experts in any specialized field. It is best to use an expert who was on the crime scene and participated in the evidence collection.

A good blood spatter expert is familiar with the literature in the field and may have published works as well. Explain to the expert how these materials are used by the defense in cross-examination. Consider the affirmative use of these materials under Fed. R. Evid. 803(18).

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The expert should be asked what experiments he or she has performed in the past, and queried as to whether experiments specific to the instant case are advisable. The use of visual aids—models, diagrams, and pieces of physical evidence—to illustrate testimony should be encouraged.

For further reading on this subject, review Herbert L. MacDonell, *Bloodstain Pattern Interpretation* (1983); Terry L. Laber and Barton P. Epstein, *Bloodstain Pattern*

*Analysis* (1983); Arthur E. Westveer, *Managing Death Investigations* (DOJ/FBI revised 1995); Robert P. Spalding, "Bloodstain Pattern Evidence and the Evaluation of Violent Crime Scenes," *The Prosecutor*, May/June 1994 (Westlaw 28-JUN PROSC 13); and Major Samuel J. Rob, "A Trial Attorney's Primer on Blood Spatter Analysis," *Army Lawyer*, August 1988 (Westlaw 1988-AUG Army Law. 36). ❖

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## The Missing Eyewitness

Assistant United States Attorney David Nissman  
District of the Virgin Islands

In the early morning hours of August 13, 1992, Lyndon Frederick called the police to report that he had accidentally shot his girlfriend in the face. When the police arrived, a hysterical Frederick exhorted them to hurry because she was still alive. He was temporarily taken into custody and gave several statements in which he explained how the gun accidentally discharged. He claimed that she was asleep, lying in a prone position, when he bent down to kiss her as he was leaving for work. He said that he had picked up his licensed gun from underneath the mattress because he wanted it out of the way when she cleaned the apartment. As he bent down to kiss her, he claimed the gun accidentally fired. He concluded his statement by saying, "I loved her a lot."

The police released Lyndon Frederick and their investigation stalled. Our office at the time was also the Territorial prosecution agency designated to handle all murder prosecutions under Virgin Islands' law. Our view was that the physical evidence would tell us whether Lyndon Frederick was telling the truth. AUSA Jim Peters, assigned to the investigation, hired a nationally renowned pathologist, Dr. Vincent DiMaio, to analyze crime scene evidence. From that evidence, Dr. DiMaio concluded that the victim was sitting up in the bed with her hand stretched in front of her in a defensive position when Frederick, standing in front of her, fired the gun into her face.

The method of the presentation of this evidence would be critical to our case. We decided to do some-

thing that had rarely been done in federal criminal cases. We contacted Forensitech, an Oregon business that prepared computer animations. The idea for this approach came while watching a news clip about Forensitech on CNN.

Computer animation consists of a series of still images based on information from the crime scene supplied by the police, prosecutor, or expert witness. The still images are created on a computer and are recorded later onto a videotape. When the images are played on a VCR the result is an animated movie.

We furnished Mr. Robert Stites of Forensitech all of the raw data that the pathologist was using (dimensions of the bedroom, location of entry wound, location of blood spatter, etc.). Stites and DiMaio communicated several times and DiMaio viewed a draft version of the animation. Dr. DiMaio made suggestions for modifications based upon his analysis of the facts and, ultimately, an accurate and presentable computer animation was developed.

During the trial, AUSA Jim Fitzner offered the computer animation as demonstrative evidence that helped explain Dr. DiMaio's testimony. Although there were objections both to Dr. DiMaio's expert opinion and the computer animation, the issue was really not a close one because it was offered as an aid to the expert's opinion, much like a chart or diagram.

The animation, which lasts less than three minutes, was a chilling piece of evidence. The jury watched while a video recreation of the defendant stood in front of the



victim while she sat on the bed. The animation of the defendant then pointed a gun at her face and fired the fatal shot. During this time the victim raised a defensive hand in front of her face. The bullet grazed her hand and entered her face below her eye. It was clear from both Dr. DiMaio's testimony and the animation, that the shooting was no accident. In a very real sense it was as if the victim returned from the grave to testify and set the record straight.

The defendant was convicted and appealed on many grounds including the claim that the animation was erroneously admitted into evidence. The Third Circuit Court of Appeals affirmed the conviction with an unpublished judgment order, *Government of the Virgin Islands v. Lyndon Frederick*, 94-7153 (3d Cir. 12/6/1994), rehearing denied 46 F.3d 1116 (3d Cir. 12/16/1994), cert. denied, 116 U.S. 48 (1995).

Since the Frederick case, Forensitech has gone on to produce videos for other criminal trials (including the OJ case). The cost of the animation in the Frederick case was \$3,000. You can reach Forensitech at (206)858-7726.

At the time the Frederick case was being investigated, the technique was only available through commercial sources. However, federal prosecutors now have a terrific resource available. The FBI lab has computer animation capabilities and, within certain guidelines, will prepare animations and provide an expert witness at trial. The Investigative and Prosecutive Graphics Unit (IPGU) Chief is Richard Berry, and Visual Information Specialist Carl Adrian produces the computer animations. These gentlemen may be reached at (202)324-4220. The Bureau will look at requests for animation on a case-by-case basis. The IPGU is interested in cases with verifiable objective evidence and definable locations. Verifiable facts include medical examiner reports, trajectory and ballistic evidence, and crime scene dimensions, among others. The IPGU is not interested in generating animations based solely on the statements of witnesses. Animations are a time-consuming process and should be developed in conjunction with other expert testimony. ❖

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## "Innerviewing"

**Director Ray Broderick**

**Lane County Oregon Child Advocacy Center, Eugene, Oregon**

*"Who are you?" said the caterpillar.*

*This was not an encouraging opening for a conversation.*

*Alice replied, rather shyly, "I—I hardly know, Sir, just at present—at least I know who I was when I got up this morning, but I think I must have been changed several times since then."*

From a witness' point of view, investigators and prosecutors often sound very much like the caterpillar in *Alice-in-Wonderland*. Our nonverbal tones and voice inflections are indeed often not encouraging openings for conversations.

While encouraging conversation may not have been the caterpillar's concern, it is the core around which an effective forensic interview grows. The caterpillar's primary, albeit from a negative perspective, lesson for those

of us who work in Wonder-Why-Land is simple and straightforward; our job is to encourage conversation.

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## Interviewer Bias

Interviewers should be as tentative in asking questions as Alice is in answering. In truth, an interviewer rarely asks a witness about an event of which the interviewer has direct knowledge. Therefore, every piece of information that an interviewer receives is going to be an abstraction and a reduction of the original event given from the point of view of the witness.

Because of this fact, perhaps the better question to be asked by a prosecutor or investigator is, "Who am I?" Each of us has active or residual biases and/or prejudices. Each of us is influenced by our family mores, community norms, cultural values, etc. My perception of another

## Witnesses as Your Best Evidence

*Victim-Witness Coordinator Michael J.P. Considine  
Northern District of Illinois*

The importance of the witness in the federal court system can never be overstated. The evolution of the federal witness has been quite extensive in recent years. Victim-witness legislation in the past 15 years has provided witnesses within the federal system a series of important rights and protections, and has effectively required law enforcement on all levels to follow guidelines set forth by Attorney General Janet Reno to ensure full compliance. We must continue to recognize that it is in the best interest of law enforcement, specifically the prosecution team, to afford our witnesses with every one of his or her granted rights and protections. If we can view and treat a witness as a genuine part of the prosecution team to a certain degree, the benefits can be endless. After all, a happy witness makes for good testimony, and good testimony makes for a successful prosecution.

Although every case and every individual is different, some relatively easy steps can be taken that can almost assure the happiness of a witness.

**Number One: Government Travel Account (GTA).** Almost every United States Attorney's office (USAO) has a fully operational GTA—an American Express account designed specifically to ease the pain of long distance travelling for an out-of-town witness—to allow the witness to avoid the difficulties and pitfalls associated with purchasing their own ticket or traveling to the nearest U.S. Marshals Service for assistance. The GTA can also be used to pre-pay a hotel room for a witness. Most USAOs can prepay for an airline ticket and get a witness on a plane in a matter of hours, so the witness can concentrate on their performance on the stand.

**Number Two: Information/Notification.** It is extremely important to notify witnesses in federal cases with as much information as is reasonable during every impor-

tant stage of the trial. A concerted effort should be made to keep witnesses involved in the case. It is, after all, their right to know. The more they feel involved, the more willing they are to be cooperative.

**Number Three: Special Authorizations Unit (SAU).** With every witness there is a unique set of circumstances or life situations that may present difficulties. They may be foreign to our country, have health problems, be quite elderly, be indigent, or have children and inadequate child care. The list goes on and on. A witness should not be penalized, for example, for being a single parent or living in an area with no relatives or close friends to watch their children. A cooperative spirit from the government will be collected twofold from the witness on the stand. It is comforting for the witness to know that it is within reason for the government to pay some of the most basic costs. It may seem insignificant to pay for a child care specialist for a witness, but the witness is usually grateful. The SAU is responsible for authorizing payment of unusual fact witness expenses.

**Number Four: Fees and Allowances.** Witnesses are allotted a \$40 witness fee, and meal and travel allowances (depending on the destination city). By simply informing a witness that the large expense of travelling out-of-town and having to be absent from work will be subsidized by the government, a positive change in attitude can take place.

It is to our advantage to provide our witnesses with the services set forth in the Attorney General's guidelines. Remember that a happy witness usually provides for a good testimony and positive results in the case. ♦

person and his or her information is going to be filtered through who I think I am. As a result, how I present myself to another person is going to be evidenced verbally and nonverbally, not only by who I think that person is, but how I see myself. Because the role of the interviewer is to gather relevant information, it is crucial that an interviewer be aware of his/her biases and prejudices so that "relevant" does not become "relative."

## Labels

Acknowledging and adjusting perceptions to account for our biases will not always protect us from the unconscious and powerful influence of words. Consider the appeal and effect in contemplating one's demise or death or homicide or murder or slaughter. Each description brings with it different emotional context. Words are the basic tools of law (and for some attorneys seemingly their *raison d'être*). The cautionary note for interviewers is to resist the seeming efficiency of using words to label people. A rose may indeed be a rose, but a "witness" may be an "offender," may be a "liar," may be a "truth teller," may be . . . may be. Experienced interviewers can cite numerous instances of investigative metamorphosis when suspect turned into victim or witness turned into suspect. Labels are for soup cans and even then one has to taste the soup to be sure it is what the label says it is.

## Nonverbal Communication

Alice and her interrogator provide the interested reader other lessons. For example, the caterpillar's detachment and/or disdain, emphasized by the author's italicized *you*, underscores how nonverbal and verbal components combine to form the whole message. Alice's tentative reply, interpreted by the caterpillar as a lack of directness, leads to further interrogation which serves only to obscure the inherent truth of her original answer.

Researchers point out that as much as 93 percent of our message to one another is nonverbal. Winks; sideways glances; finger taps; throat clearing; and looks of surprise, joy, and disgust are all parts of a message which, combined with words, create meaning. Interviewers need to use this 80 to 90 percent of communications as leverage to keep information flowing.

Interviewers should not hobble themselves by artificially segmenting the information gathering process into

categories of interview and interrogation. It is psychologically limiting to have special rules of engagement to be applied when people become suspects. The goal of the interview is to gather information. The goal of investigation is to test the accuracy of that information.

Interrogation for some practitioners is separated from interview by both time and place. Their goal is to get confessions. This methodology is information gathering at its least subtle level and in its most simplistic form. Under this model the interrogation directs the investigation, rather than the investigation directing the interview.

Like the caterpillar, police and prosecutors need to find answers to the who questions and additionally answer the what, where, when, why, and how questions. If interviewers eschew confrontation which, more often than not, limits and discourages communication, they are free to effectively integrate all of the psychological, semantic, and physiological knowledge currently available in order to encourage conversation. Good interviewers already know how to compare a witness' nonverbal disclosures with his/her words. They are aware of how to adjust their body postures to minimize threat or intimidation. They know how to prolong conversation with head nods and affirmative sounds. They can learn how to use cognitive interview techniques to aid recall.

On the stand or on the street, interviewers need to practice applying their knowledge of nonverbal signals to promote their investigation of truth telling or deception. By itself, a cork does not control whether wine stays in a bottle or pours out. How a person uses the cork determines whether the wine will flow or not. How we use nonverbal communication determines whether the talk will flow or not. ♦

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### About the author:

Ray Broderick became the Director of the Lane County, Oregon, Child Advocacy Center in 1995 after spending nearly 20 years as a District Attorney's investigator with Lane County. He also spent 12 years with the Chicago Police Department, four of those years as a special investigator for the Cook County, Illinois, State's Attorney's office. Ray estimates that he has interviewed over 30,000 people. Ray promotes the value of video interviewing for child victims of abuse. Under the auspices of the Lane County District Attorney's office, the Child Advocacy Center is a place where child video interviews are conducted in age-based, child-friendly interview rooms. The Center also has medical examination rooms and other victim services, and houses a special child grand jury and the Lane County Multi-disciplinary Child Abuse Team.



# Dazzling with Plain Speaking

**Trial Attorney Kenneth Bressler**

**New England Bank Fraud Task Force, Fraud Section, Criminal Division**

The most important laws when you step in front of a jury are the laws of communication. If you use legalese, jargon, or multi-syllabic words when plain speaking will do, you might as well hang a sign around your neck reading, "I'm a lawyer and you're not." Why put that barrier between you and jurors?

Don't use jargon and don't let witnesses use jargon without following up. If an expert witness testifies about, say, a contusion, you need to ask, "Doctor, is there an everyday word for 'contusion'?" (It's "bruise.") If an agent testifies that "we exited the government vehicle," you can deflate the jargon with a loopback question: "Agent, after you got out of the car, what did you do?" Not only are you translating for the jury, you are subtly signaling the witness to speak more conversationally.

## FDR and Passive Voice

The *New York Public Library Writer's Guide* reports the following story. During World War II, President Roosevelt received this message for review (passive voice in italics):

Such preparations *shall be made* as will completely obscure all federal buildings *occupied* by the federal government during an air raid for any period of time from visibility by reason of internal or external illumination. Such obscuration *may be obtained* either by blackout construction or by terminating the illumination.

This will, of course, require that in building areas in which production must continue during a blackout, construction *be provided*, that internal illumination may continue. Other areas, whether or not *occupied* by personnel, *may be obscured* by terminating the illumination.

He edited it to read:

In buildings where work will have to keep going, put something across the windows. In buildings where work can be stopped for a while, turn out the lights. ♦

A good way to practice avoiding legalese in the courtroom is to stop using it in the office.

<i>Instead of...</i>	<i>say...</i>
Did you have occasion . . . . .	Did you
Did there come a time when . . .	Did
have a conversation . . . . .	talk
direct ( <i>as a verb</i> ) . . . . .	tell
previous to . . . . .	before
prior to . . . . .	before
subsequent to . . . . .	after
in the course of . . . . .	during
on behalf of . . . . .	for
pursuant to . . . . .	under

Avoid legalistic imposters for simple verbs.

<i>Instead of...</i>	<i>say...</i>
have knowledge of . . . . .	know
have need of . . . . .	need
make use of . . . . .	use
make payment . . . . .	pay
make an observation of . . . . .	observe <i>or better yet,</i> see
offer testimony . . . . .	testify
give warning . . . . .	warn
give consideration . . . . .	consider
give notice to . . . . .	notify, <i>or better yet,</i> tell
give notification to . . . . .	notify, <i>or better yet,</i> tell

Here's the tipoff to a legalistic imposter for a simple verb: Combining a common verb, such as "make," "have," or "give," with a noun that has a verb form. For example, the noun "knowledge" has a corresponding verb, "know." "Have knowledge of" is three words with a total of four syllables. "Know" is one word with one syllable. Just say "know."

**Use the active voice.** Active voice occurs where the subject of the sentence performs the action. Passive voice occurs where the subject of the sentence receives the

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action. For example, the question "What did the defendant pass hand-to-hand?" is in active voice. "What was passed hand-to-hand by the defendant?" is passive. Passive language can sound pompous and be hard to understand. In the example above, passive voice fails to properly emphasize the defendant's wrong-doing.

Here are two tipoffs that you are using the passive voice: 1) A person is often missing from the sentence. The question, "What was said on the street corner?" does not refer to a person. The sentence is missing a subject. 2) The word "by." Example: "What was said *by* the defendant on the street corner?" The question does refer to a person, but it is still in the passive voice; the word "by" is the tipoff.

**Avoid "with respect to" questions.** For example: "What did you do *with respect to* subduing the defendant?" That's a less precise way of asking, "Did you subdue the defendant?" and then "What did you do?" Similar phrases are: in regards to, regarding, relative to, relating to, in relation to, concerning, in terms of.

In sum, if you want a prosecution-friendly jury, be a jury-friendly prosecutor. Be the one lawyer in the courtroom who explains everything, directly or indirectly. Be the one lawyer who is conversational. Be the lawyer who dazzles with plain speaking. ♦

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## Madison Wisconsin High Tech Courtroom

*System Manager Stacey Joannes  
Western District of Wisconsin*

### Overview

Over the last decade, as computers have become more and more powerful, computer presentation technology has quickly spread into all areas of business communications. It is almost impossible now to come to a training seminar or a meeting and not be exposed to some type of computer video presentation. From boardrooms to courtrooms, from classrooms to war-rooms, presentation technology is now an integral part of any state-of-the-art communication system. This new technology is also responsible for a new form of communication which is quickly taking its rightful place under the umbrella of multimedia, right next to audio, data, and broadcast video. Industry insiders refer to this form of communication as High Resolution Video Communication. With its own name also comes its technical jargon, special design considerations, installation techniques, and various equipment that interfaces many incompatible devices to make systems work cohesively.

### History

In late 1994 computer technology in the courtroom became a hot topic in offices around the country. Although most of the technology was not new, it was just being introduced to trial attorneys. Not wanting to get behind in the race for technology in the courtroom, it was time to develop a system.

After talking to several vendors and making countless mistakes, a system was developed to display evidence. The system had many components and countless feet of cable. It was rather messy but worked extremely well.

After using the system successfully in trial, it was time to bring the courts into the loop. The system was demonstrated three times to various office and court staff. The system was so well received that a project to permanently install the equipment was undertaken in mid-1995. This installation was yet another learning experience in the quest to bring technology to the courtroom.

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## Installation

The installation of the equipment brought on many new problems. Many questions had to be answered. What size and type of monitors should be used? How should electricity be used? Who should get monitors? What type of cable needs to be pulled? Should wire be pulled for a network? Should real-time court reporting be added?

With all these questions came answers. Sometimes the answer was not what was expected. Sometimes the answer brought on new questions. In the end, however, the installation took about six months, several headaches, and we now have one very usable successful system.

## Equipment

Many people have asked for an equipment list. This list will be technical at times, but should answer all questions asked about the system. Integration issues will be handled later in this paper.

**Elmo Visual Presenter:** The Elmo is the most sophisticated video capture system with unsurpassed feature for operator's convenience and clear image video of any material from 3-D objects to transparencies. Users can place just about any object on the platform to show on all eleven monitors.

**VCR:** The Sony VCR allows any video to be played and displayed on the system. The VCR has a toggle remote that allows users to go frame by frame. Speed control allows for variable playbacks.

**Inline Scan Doubler:** The scan doubler enhances composite video or S-Video input signals by doubling the number of video lines, resulting in an Improved Definition Television (IDTV) output signal. When used with NTSC input, the default output signal is 31.5 KHz in the RGBHV format. This signal is directly compatible with LCD panels, and data monitors which are capable of displaying VGA signals at 640x480 resolution. Added features included individual input setup, freeze frame, and volume control.

**Inline Series Switcher:** This device is a high performance, high quality analog switcher. This switcher is designed to accept high resolution video signal from multiple sources and switch them to a single display device. This switcher takes six inputs and gives one output.

**Inline 6-In 1-Out Stereo Audio Switcher:** This device works in tandem with the 3500 Series Switcher. When the input is changed, so is the audio. This automatic switch is essential for seamless court presentations.

**Altinex Distribution Amplifier:** This device allows the defense and prosecution the ability to use the monitor in front of them for local computer view or court view with the switch of a button.

**Boeckeler Pointmaker Video Marker:** This device allows users to draw, point, and type on any image on the system. A tablet accompanies the system making drawing from counsel table easy. Color changes can easily be made to differentiate between meaning. Another pen is placed on the witness stand for easy drawing by a witness.

**Court-PC-View:** This is a high resolution video switcher designed for state-of-the-art video presentations. This device offers six VGA outputs designated for providing the various court participants in a trial video images of the courtroom presentation. Each monitor can be turned on and off on demand. Four preset buttons also let you turn "sets" of monitors on or off.

**Sony Video Printer:** This printer allows any image displayed on the court system to be printed on demand. Image print size is 4.25 by 3.25.

**Altinex 1506RT:** This device is a video distribution amplifier designed to distribute high resolution video signals to up to six monitors. This is used in the jury box to take on input signal and distribute to multiple monitors.

**DeltaScan Scan Converter:** This device turns the VGA signal back into an NTSC signal. It is used to give the video printer all signals running through the system.



**Elmo X Jury Monitors:** These monitors are superior high resolution devices for use in the jury box. They can display in a resolution as high as 1024x768. They have superior high resolution quality that is well received by jury members.

## Uses

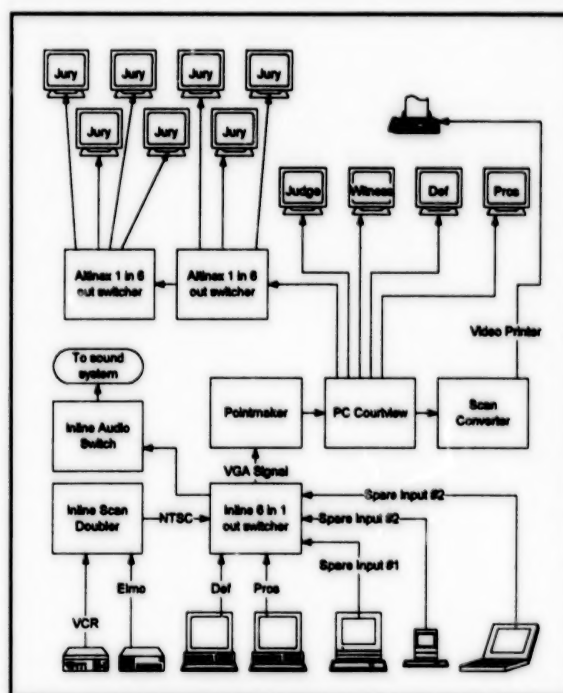
**Video Tapes:** Users can simply play any video tape in the system. Please note that at any time you can pause the VCR and get a clean image on the screen. At this point you can use the tablet or witness pen to draw on the video tape image. If needed, a printed copy of the current frame can be printed on the UP-1800. Also note that the "freeze frame" button on the Inline 1224 can also be used to freeze an image. This method does not stop the tape, but produces a superior freeze of the image.

**Documents, Objects:** Anything you can hold in your hand you can place on the Elmo to view. After focusing the image, you can draw using the tablet or witness pen. Also note that the "freeze frame" button on the Inline 1224 can also be used to freeze an image. Using this method, a document can be taken off the ELMO but still be displayed on the system.

**Computer Input:** Any computer system can be connected to the system. The "cart" that holds most of the system has two convenient connection points. One for the defense and one for the prosecution.

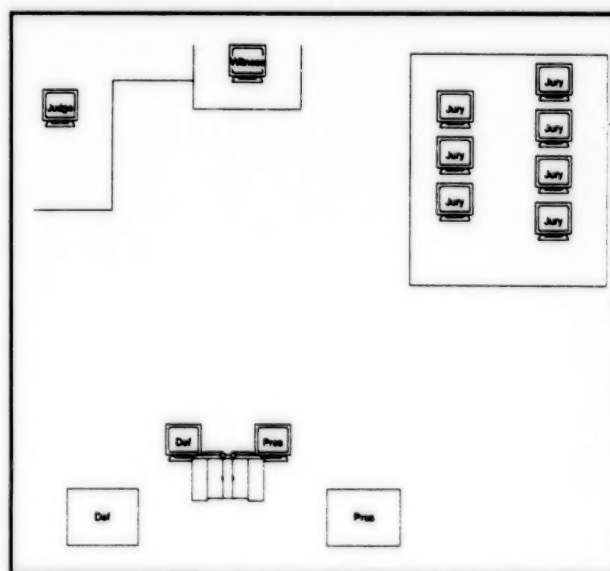
## Physical Courtroom Layout

**Input, Equipment, and Output Diagram:** The illustration, top, shows the courtroom setup. It is broken down into three main areas. The first area, input, shows all the possible input devices used. The equipment part shows equipment that was outlined earlier in the document. The output shows the monitors and the printer used in the system.



## Monitor and Equipment Location

The illustration below shows the physical courtroom layout, including monitor and equipment. ♦



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# OLE's Interactive Video to Teach Trial Advocacy

*Assistant United States Attorney Richard Parker, Eastern District of Virginia and Assistant United States Attorney Tom Majors, Office of Legal Education, Executive Office for United States Attorneys*

The Office of Legal Education acquired an interactive evidence skills program for use in its seminars. Assistant United States Attorney Barbara Grewe, District of Columbia, first suggested the program developed at Stanford Law School to the Office of Legal Education. Jeff Senger and Eileen Gleason of the Office of Legal Education; Assistant United States Attorney Donna Sanger, District of Maryland; Assistant United States Attorney Maureen Murphy, Southern District of Ohio; Assistant United States Attorney Kent Penhallurick, Northern District of Ohio; and Assistant United States Attorney Richard Parker, Eastern District of Virginia, are trained to run the program.

OLE is now actively using interactive laser disc technology in trial advocacy skills courses designed as "refreshers" for experienced civil trial attorneys and Assistant United States Attorneys. The three-disc series portrays the direct examination and cross examination of the plaintiff and defendant in a breach of a personal services contract case.

Pictured on the two video screens at the front of the classroom are the trial judge, witness, and the attorney conducting the examination. The trial judge is fair and knows the Federal Rules of Evidence but he is impatient with people who don't. The students viewing the proceedings participate as the opposing counsel. They are encouraged to object to objectionable questions posed by counsel. The course facilitator enters their objections into the computer which controls the disc player and TV, and the trial judge then rules upon the objection. In some cases, the opposing counsel responds to the objection and the judge demands a further response from the student. There are a tremendous number of outcomes possible because of

the great amount of information stored on the discs. "The disc series got overwhelming praise from attorneys and was very fun and informative," according to Assistant United States Attorney Martin Littlefield, Western District of New York.

The series is designed to reinforce basic evidentiary principles such as foundations for the introduction of evidence, the rule against hearsay, and the issue of expert testimony, to name a few. After each ruling, the facilitator may 'flesh-out' the judge's comments with cites to the applicable Federal Rules of Evidence, and practical advice. The course lasts approximately three hours when presented to experienced litigators. For students less conversant in basic trial and evidentiary skills who engage in more conversation with the facilitator, the course may last longer.

OLE has received very positive feedback from attorneys who have attended the course. The overwhelming majority enjoyed the professional quality of the video and the manner in which the facilitator conducted the course. It is a more realistic and engaging way of teaching or reinforcing trial advocacy skills.

OLE is also using a new digital camera technology in many of its Washington, D.C., courses. The digital camera can replace the overhead, viewgraph, slide projector, and other types of presentation equipment. Look for this new legal education technology at your next Washington, D.C., OLE course.

If you know of new educational aids that may enhance presentations at OLE seminars, please call OLE Director Janet Craig, (202)616-6700. If you have any questions about any of this new technology, please call OLE at the same number. ♦

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# Department of Justice History: *Trial of the Century*

**Ed Hagen**

*Executive Office for United States Attorneys, Office of Legal Education*

In this era of sensationalized criminal trials, the term "trial of the century" gets used pretty loosely. But the recent passing of Judge Thomas Murphy is a reminder of a truly historic case successfully handled by Murphy when he was an Assistant United States Attorney almost 50 years ago.

Thomas Murphy, the grandson of a police officer, grew up in New York City, and received his law degree from Fordham. His younger brother, Johnny Murphy, was a star relief pitcher for the New York Yankees. Standing 6 feet 4 inches tall, heavy set with a walrus mustache, Murphy made an imposing presence, but was quiet and unassuming.

In 1949 Murphy was assigned to prosecute Alger Hiss for perjury. Hiss, who had clerked for Justice Oliver Wendell Holmes, Jr., was a rising star in the State Department, playing notable roles at the Yalta conference and in the formation of the United Nations. In 1948 he was publicly accused of espionage for the Soviet Union by an editor of Time magazine, Whittaker Chambers, himself an admitted former Soviet agent. Hiss denied the allegations in a highly publicized hearing where he was closely questioned by a then obscure California Congressman, Richard Nixon. Hiss then brought a libel suit against Chambers, which, unfortunately for Hiss, resulted in the discovery of corroborating evidence. This in turn led to a grand jury proceeding, in which Hiss again denied having been a Soviet agent. Although the then existing statute of limitations ruled out any prosecution of Hiss for espionage, he was indicted for perjury based on his grand jury testimony.

The case became a national sensation, focusing as it did on the momentous issue of whether the government had been infiltrated by Soviet agents at the highest level. Although Murphy had significant corroborating evidence—he was able to show that sensitive documents had been retyped on Hiss' typewriter, with interlineations in Hiss' handwriting—Hiss was ably defended, and enjoyed

the support of many prominent people. Character witnesses for Hiss included two sitting Supreme Court Justices and a former presidential candidate; Murphy was not amused when the trial judge shook Justice Frankfurter's hand in front of the jury as Frankfurter began his testimony for the defense. The six-week trial resulted in a jury deadlock, hung eight to four for conviction.

The case was tried again four months later. Murphy's resolve hardened for the second trial. Chambers later wrote:

*His grasp of the intricacies of the Hiss case was now firm and supple. He was at ease with it with the relaxed authority of a man who has mastered an art and now wants to practice it. He understood the Case, not only as a problem in law. He understood it in its fullest religious, moral, human and historical meaning. I saw that he had in him one of the rarest of human seeds—the faculty for growth, combined with a faculty almost as rare—a singular magnanimity of spirit. Into me, battered and gray of mood after a year of private struggle and public mauling, he infused new heart, not only because of what he was, but because he was the first man from the Government who said to me in effect: "I understand." I needed no more.*

The second trial lasted ten weeks. Murphy worked late every night, analyzing the court record and dictating detailed notes on everything that had taken place during the day. His resulting cross-examinations masterfully extracted contradictions and inconsistencies from witnesses.

The defense called an eminent psychiatrist, Dr. Carl Binger, who offered the expert opinion that Chambers was a psychopath prone to repetitive pathological lying. Murphy's cross-examination was aggressive. When Binger initially resisted Murphy's suggestion that



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"psychopathic personality" was a "wastepaper basket classification of a lot of symptoms," Murphy confronted Binger with a psychiatric monograph so describing the condition. Binger indicated he had not read the work, but "agreed with every word."

Murphy then painstakingly kicked at the underpinnings for Binger's opinion. For example, Binger had watched Chambers testify, and in his direct testimony cited Chambers' tendency to gaze at the ceiling during the testimony as "confirmatory" evidence of a psychopathic personality. Murphy quietly instructed an assistant to watch Binger's testimony; the assistant counted 50 glances at the ceiling in less than an hour. Murphy asked Binger whether this established a psychopathic personality. Binger replied, "Not alone."

At the end of the trial, Murphy's command of the evidence was such that he was able to deliver an organized and compelling two and one-half hour summation without the use of notes. The jury later returned with a verdict of guilty as charged, and Hiss was sentenced to five years of prison. Chambers later wrote:

"When Thomas Murphy decided, somewhat reluctantly, to take the Hiss Case, almost nobody had heard of him. Within the Justice Department he was known as a man who had never lost a case. Otherwise, he was a man who jostled no one, for he seemed without ambition beyond his immediate work. . . . Yet when the historic moment came, Murphy was waiting there at the one point

in time and place where he could bring all that he was and all that life had made him to bear with decisive effect for the nation."

Murphy's career did not end with the Hiss case. Less than a year later, the New York City police department was rocked by gambling and bribery allegations. The mayor made Murphy Police Commissioner, and told him to clean up the mess. Murphy replaced all 336 plainclothes officers with younger officers, and instituted a merit system for promotions. Murphy went after the "venal rascals who bring harm to other loyal workers as well as violate the public trust," while standing up for the honest majority. "For every cop who will take a buck from a bookie, there are hundreds who will stand up for you and me and take a bullet." He left after less than a year, gaining unanimous praise for a job well done, and was appointed to the U.S. District Court by President Truman. He served with distinction for many years as a trial judge.

The media coverage of the Hiss case, although extraordinary for its time, falls short of what we have today. There would be no movie or book contracts for Murphy. Shortly after the trial, Murphy stepped out of a taxi in New York. The driver asked the other man in the cab, "Who's the big fellow?"

"That's Tom Murphy, the man who just convicted Alger Hiss," the man replied. "Oh," said the driver, "you mean Johnny Murphy's brother!" ♦

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## More on Immigration . . . Prosecuting Organized Alien Smuggling

*Assistant United States Attorney Tom Roepke  
Western District of Texas  
El Paso Branch*

Every year thousands of undocumented aliens enter the United States, and many remain permanently or for extended periods of time. The social problems associated with uncontrolled immigration have been emphasized and debated vigorously in numerous public forums. Unfortunately, the debate seldom has focused on alien smugglers who are responsible for a large portion of that illegal migration.

For many years, INS has known of established "pipelines" used to funnel undocumented aliens into the country. In many cases these pipelines are nothing more than loosely organized groups of persons working together with the common goal of profiting from the illegal migration into this country. A large number of organized alien smuggling groups are located in whole or in part in Mexico. Alien smugglers prefer travel through Mexico, because it is safer and cheaper than many forms of air or sea travel which must be used to get into other parts of

the United States. Further, upon arrival at our southern border, alien smugglers have over 2,000 miles of mostly open country to gain illegal entry.

The Western District of Texas is one of the largest districts in the federal system. The western portion of the district borders on Mexico from Eagle Pass to El Paso. The district includes approximately 692 miles of the Rio Grande River, which comprises about one-fourth of the boundary with Mexico. Most of this area is sparsely populated, and many of the border cities have less than 5,000 persons. In most of the Western District of Texas, alien smugglers are apprehended by roving patrols or at fixed checkpoints located at strategic highways near the border. Alien smugglers who are arrested by roving patrols or at checkpoints generally are drivers hired for that specific purpose, and usually far down the ladder of responsibility within the organization. It is difficult to maintain a proactive investigation without the full cooperation of the subjects arrested and, in most cases, only the driver is charged, the vehicle is forfeited, and the transported aliens are returned to Mexico.

In El Paso, the investigation of alien smuggling cases presents an entirely different picture. El Paso has always been a popular city for alien smuggling organizations. They have chosen El Paso, because it is one of only two major American cities, the other being San Diego, located directly on the border. With its population of over 600,000, El Paso offers all forms of public transportation and has two airports, a bus station, and a train station, all within a short distance of the border. In a city of over 600,000 people, a large group of smuggled aliens is far less conspicuous than in a border town of fewer than 5,000 people.

Despite the concentration of population here, alien smugglers are still extremely hesitant to travel inland with a group of smuggled aliens. Their primary fear is the fixed checkpoints which cover nearly every major highway leaving the El Paso area. Border Patrol agents have long known that many persons in the El Paso area specialize in smuggling aliens from El Paso to other metropolitan areas in the United States. Agents from the El Paso sector have capitalized on that specialization and frequently pose as local individuals who will transport undocumented aliens from the border on a contractual basis.

In order to gain the confidence of alien smuggling organizations, the agents frequently utilize "controlled loads." This method of investigation involves the trans-

porting of a group of undocumented aliens for a smuggling organization. The persons are transported in order to gain the confidence of the smugglers, as well as to identify other persons in the United States who may be involved in harboring or sheltering the smuggled aliens at "drop houses."

Although this method of investigation involves transporting undocumented persons into the country, every effort is made to identify the aliens for apprehension and removal at the close of the investigation. It has also proven to be the most effective means of identifying and arresting persons engaged in sophisticated commercial alien smuggling operations. Although many of the leaders and organizers of alien smuggling groups will not personally transport or harbor the aliens in this country, they have shown a willingness to enter the United States in order to negotiate or pay local individuals whom they believe are willing to take those risks.

Once contact is made and the confidence of the organization has been acquired, all the typical undercover investigative techniques are used. Recorded phone calls, body recording devices, and video cameras are used whenever conditions allow. Many alien smuggling organizations maintain far more elaborate records than large scale narcotic trafficking organizations. Consequently, search warrants are also utilized for vehicles or drop houses in an effort to seize those records.

As in any undercover operation, the testimony of the undercover agents involved is the most useful evidence in obtaining a conviction. Additionally, the testimony of the smuggled aliens is often extremely useful. It is the smuggled aliens who will likely create the greatest number of difficulties for prosecutors while the case is pending.

Many smuggled aliens enter this country desperate with no real plan or destination in mind. They seldom have money or other resources and frequently have no family contacts or persons with whom they intend to reside. In the Western District of Texas, we initially tried to release smuggled aliens on a witness bond. Because most of the witnesses were indigent, the majority of the bonds were without security. An effort was made to make a friend or relative third party custodian pursuant to the Bail Reform Act. This method was used for several years with very limited success. In the majority of cases, the witnesses absconded and friends or family members were extremely hesitant to provide any assistance in locating them in time for trial.

For a time, we attempted to hold the witnesses in custody by charging them with illegal entry and seeking a jail sentence. As an alternative to charging the witnesses, we sought to detain them as a flight risk pursuant to the Bail Reform Act. Both methods proved unsatisfactory because the prolonged incarceration caused the witnesses to become recalcitrant and uncooperative by the time of trial. In some cases, the witnesses were held in the same facility or even in the same cell as one or more of the defendants. Generally, the witnesses either refused to testify or wound up testifying for the defense.

The use of depositions has proven unsatisfactory, because even though the deposition is taken, the witnesses must still be kept in the United States to avoid the objection that the government made the witnesses unavailable through deportation. See Federal Rule of Evidence 804(a). Juror interviews have convinced us that a taped deposition of a smuggled alien does very little toward aiding the government to obtain a conviction. Once the deposition has been taken, the defendant is free to testify to a slightly different version of the facts, and the deposed alien is not available for rebuttal purposes. Utilization of a live witness has proven far more successful.

The most successful method in this district was developed with the assistance of the Pretrial Services Office. Under our current system, any witness who does not pose a flight risk or a danger to anyone else is placed in a local half-way house by order of the magistrate who commits the witness. The court order is entered upon the motion of the court-appointed counsel for the witness with the concurrence of government counsel and the Pretrial Services Office. The witnesses are given temporary immigration documents with employment authorization by the INS or Border Patrol case agents.

The staff at the half-way house makes every effort to assist the committed witnesses to obtain employment in the El Paso area, and they also participate in all other educational and social programs offered to other residents of the facility. Although the freedom of the witnesses is restricted at night, they are allowed to move about the grounds during the day, and are encouraged to leave for employment purposes. Accommodations at the facility are comfortable, and the witnesses are allowed to work, which is the primary reason why many of them came to

the United States. The court appointed attorney for the witness carefully explains the nature of the Magistrate's order, which seems to remove much of the apprehension that many alien witnesses have about being held as a witness. If a witness does abscond, the Magistrate signs a bench warrant, and they are treated as any other fugitive. Because the witnesses are given comfortable accommodations and are treated with respect, very few have absconded over the last five years. This method makes witnesses readily available for pretrial interviews by government or defense counsel, and the government has a live witness as opposed to the videotaped deposition.

One of the most difficult problems we have encountered is the juvenile witness. In cases where children must be kept as witnesses, we have had some success utilizing our juvenile home or child protective services. Since Texas law does not allow the indefinite commitment of juveniles, we have been forced to dispose rapidly of cases where juvenile witnesses are involved. Because of the problems presented by juvenile witnesses, experience has taught us to avoid retaining them as witnesses whenever possible.

Another problem we have encountered is the witness who speaks a rare language or dialect. The Western District of Texas is currently involved in a Mann Act case (18 U.S.C. § 2421) where the only witness is from Thailand. After indicting the case, we discovered that only about a dozen people in El Paso speak the Thai language. Committing the witness anywhere involved language barrier problems. Because the witness was a flight risk, we were unwilling to commit her a great distance from El Paso. The witness found herself socially isolated because virtually no one could communicate with her and usual forms of entertainment, such as television, radio, books, and magazines, are not readily available in the Thai language in this area.

Approximately 25 alien smuggling cases are prosecuted in El Paso each year. All of these cases require that alien witnesses be retained until the conclusion of the case. Successful management of these witnesses requires the formulation of a plan which is satisfactory to all parties involved, including the courts. If everyone pulls in the same direction, you should be able to deal with most of the problems presented by these witnesses. ❖



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# Commendations

The following commendations were submitted to the Executive Office for United States Attorneys during the period December 1995 through March 1996. The *United States Attorneys' Bulletin* publishes commendations semiannually of Assistant United States Attorneys and USAO personnel commended with them.

**Isabel Munoz Acosta** (District of Puerto Rico), by General Counsel Deborah C. Westbrook, United States Marshals Service, for her successful defense of *Melendez Castro v. United States*, a Federal Tort Claims Act case.

**Leland Altschuler** (Northern District of California), by National Wildlife Federation President William W. Howard, for his commitment and contributions to the conservation of natural resources.

**Charles Ambrose** (Western District of Missouri), by DOJ Criminal Division Chief Paul E. Coffey, Organized Crime and Racketeering Section, for his continued outstanding success in the prosecution of James Vest who pled guilty to murder and related offenses and agreed to testify against his brothers at their upcoming trials.

**Kent Anderson** (Eastern District of Tennessee), by Regional Counsel Ronald D. Dooley, Department of Veteran's Affairs, for his efforts in settling *Charles William Gallant, Jr., by his guardian and next friend Ruth Gallant, Claimant v. United States, Defendant Compromise Settlement*, a Federal Tort Claims Act case.

**Lynn Anderson** (Western District of Oklahoma), by Director Aileen Adams, Office for Victims of Crime, Office of Justice Programs, for coordinating information and services for the Oklahoma City bombing victims. In addition, Ms. Anderson helped train all FBI victim-witness coordinators on handling multi-victim cases at an OVC-sponsored training in Washington, D.C.

**Thomas Ansel**, Intelligence Analyst (Eastern District of Pennsylvania), by Duane, Morris & Heckscher Attorney Michael M. Baylson, former United States Attorney for the Eastern District of Pennsylvania, for his successful prosecution of John Stanfa and others on RICO charges.

**Dan Bach** (Western District of Wisconsin), by Detective Captain Kenneth R. Manthey, Portage Police Department, for his successful prosecution of Harvey Wing and Joey Hicks on arson charges.

**David Barger** (Eastern District of Virginia), by Regional Inspector Richard Byrd, Jr., Department of the Treasury, for his efforts in the case against Thomas Yi who was convicted of supplementing the salary of an Internal Revenue Service employee.

**Peter Barrett** (Southern District of Mississippi), by FBI Special Agent in Charge James Frier, for his successful prosecution of *United States v. John Joseph Vaccaro, et al.*, for RICO, RICO conspiracy, and wire fraud.

**Richard Barrett** (Eastern District of Pennsylvania), by Director Frances Fragos Townsend, Office of International Affairs, Criminal Division, for his efforts with the recent Italian delegation that came to the United States to conduct two organized crime trials.

**Robert D. Bartels**, Deputy Chief of the Civil Section (District of Arizona), by Superintendent Robert L. Arnberger, Grand Canyon National Park, for his tremendous support and hard work in the Grand Canyon Closure Incident in November 1995.

**Paul Becker**, Chief of the Strike Force Unit (Western District of Missouri), by DOJ Criminal Division Chief Paul E. Coffey, Organized Crime and Racketeering Section, for his continued outstanding success in the prosecution of James Vest who pled guilty to murder and related offenses and agreed to testify against his brothers at their upcoming trials.

**William A. Behe** (Middle District of Pennsylvania), by Attorney General Janet Reno, for his outstanding efforts in the investigation and prosecution of *United States v. Ernest D. Preate, Jr.*, a federal mail fraud case.

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**George L. Bevan, Jr.** (Northern District of California), by BATF Special Agent in Charge Paul M. Snabel, for his successful prosecution of Kevin Collins in a federal firearms case.

**Robert Bradenham, II** (Eastern District of Virginia), by FBI Director Louis J. Freeh and Special Agent in Charge Larry E. Torrence, for his successful prosecution of *United States v. Gene R. Eaton, Jr.*, an armed bank robbery case.

**Susan Dein Bricklin** (Eastern District of Pennsylvania), by FBI Supervisory Special Agent Charlotte A. Lang, for her efforts in *United States v. Montgomery Hospital, et al.*, a civil false claims act case.

**James A. Brunson** (Eastern District of Michigan), by Janet S. Fox, Legal Director, U.S. Anti-Piracy, Motion Picture Association of America, Inc., for his successful prosecution of *United States v. Kevin Fleenor*, a video-cassette piracy case.

**Peter Caplan** (Eastern District of Michigan), by Jeffrey E. Reim, Assistant Chief Counsel's Office, U.S. Customs, Detroit, for his efforts in the Commodities Export litigation.

**Peter Caplan** (Eastern District of Michigan), by Regional Administrator M. Woods, Department of Agriculture, for successfully defending administrative actions taken against retailers found to be in violation of the Food Stamp Act.

**Martin C. Carlson** (Middle District of Pennsylvania), by Attorney General Janet Reno, for his outstanding efforts in the investigation and prosecution of *United States v. Ernest D. Preate, Jr.*, a federal mail fraud case.

**Jon Cederberg** (Central District of California), by FBI Special Agent in Charge Charlie J. Parsons, for his successful prosecution of *United States v. Marcie Marie Hulett*, an embezzlement case.

**Sandra Wilson Cherry** (Eastern District of Arkansas), by Regional Inspector General for Investigations William E. Lucas, Dallas Department of Health and Human Services, for her receipt of an Inspector General Integrity Award for her outstanding prosecutive efforts in several fraud, waste, and abuse cases involving the programs of the U.S. Department of Health and Human Services.

**Stephen B. Clark** (Southern District of Illinois), by Postal Inspector in Charge R. J. Terlep, United States Postal Inspection Service, St. Louis, for his successful prosecution of Virgil Lockett, a postal employee, and his cousin, Lafayette James, for using a communication device to facilitate the distribution of crack cocaine. Additionally, Lockett was charged with possession with intent to distribute and conspiracy. James was charged with distribution and conspiracy.

**Steve Cook** (Eastern District of Tennessee), by Special Agent in Charge Richard A. Easley, Department of Defense, Southeast Region, Inspector General for Investigations, for his successful prosecution of the government contract fraud cases involving Camel Manufacturing Company, its president, Ben D. Bower, and vice-president, Clark Dial, who unlawfully converted \$2.1 million in public funds and supplied DOD with nonconforming protective headgear. Overall recoveries were in excess of \$6 million in restitution and fines to the United States, as well as felony convictions of the president of the company and Camel Manufacturing for their fraudulent activities.

**Gregg Coonrod** (Western District of Missouri), by Captain James F. Keathley, Missouri State Highway Patrol, Division of Drug and Crime Control, for his successful prosecution of James E. Rhodenizer who was found guilty on four counts of narcotic and weapons charges.

**Robert K. Coulter** (Eastern District of Virginia), by Managing Counsel William A. Campbell, Jr., United States Postal Service, for his successful prosecution of two bankruptcy fraud cases: *In re Swan Caterers, Inc.*, and *United States Postal Service v. Tajick*.

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**Robert Courtney, III**, Deputy Chief of the Organized Crime Division (Eastern District of Pennsylvania), by Duane, Morris & Heckscher Attorney Michael M. Baylson, former United States Attorney for the Eastern District of Pennsylvania, for his successful prosecution of John Stanfa and others on RICO charges.

**Kenneth D. Crowder** (Southern District of Georgia), by Department of Energy Attorney Lucy M. Knowles, for his efforts with *Gilyard v. United States Department of Energy*, an employment discrimination case.

**Roman Darmer, III** (Southern District of New York), by Assistant Inspector General for Investigations Stephen N. Marica, U.S. Small Business Administration, for his outstanding work in the prosecution of Luis Carrizo on three counts of accepting commissions for procuring SBA guaranteed loans. Mr. Carrizo was a former vice-president of the New York office of Banco de la Provincia de Buenos Aires.

**Michael J. Davidson**, SAUSA (District of Arizona), by Superintendent Robert L. Arnberger, Grand Canyon National Park, for his tremendous support and hard work in the Grand Canyon Closure Incident in November 1995.

**Lois W. Davis** (Eastern District of Pennsylvania), by Regional Solicitor Anthony R. Conte, U.S. Department of the Interior, for obtaining a voluntary dismissal of *Rossi v. Palmer Township, et al.*, a personal injury case.

**Doris Dean**, Paralegal (Western District of Louisiana), by Clyde H. Sellers, Chief, Real Estate Division, Department of the Army, New Orleans, for her efforts with land condemnation cases.

**Leo M. Dillon** (Western District of Pennsylvania), by FBI Special Agent in Charge John P. O'Connor, for his successful prosecution of *United States v. Walter Cross, et al.*, a public corruption case.

**Tom Dittmeier** (Eastern District of Missouri), by Chief of Police David A. King, City of Saint Charles, for his

successful prosecution of Richard DeCaro for the murder of his wife, Elizabeth DeCaro.

**Vivian R. Donelson** (Western District of Tennessee), by Tennessee Valley Authority Inspector General George T. Prosser, for her efforts during the investigation and prosecution of criminal cases arising from the Tennessee Valley Authority's Commercial and Industrial Energy Conservation Loan Program.

**Keir N. Dougall** (Eastern District of Pennsylvania), by Captain J.C. Bergner, United States Navy, for his successful defense of *Robert Wise v. John H. Dalton, Secretary, Department of the Navy*, a handicap discrimination case.

**Dan Drake** (District of Arizona), by private citizens Bob and JoAnn Hartle, for his successful prosecution of Scott Gilbert for false statements and acquisition of a firearm and for false statements in connection with a loan application.

**Robert Erickson** (Eastern District of Virginia), by Inspector General Roberta L. Gross, NASA, for his successful prosecution of *United States v. Ganapathi, et al.*, a mail fraud case.

**Jo Faber** (Eastern District of Pennsylvania), by Stuart Drobney, Stumar Investigations, for her successful prosecution of the Jung Suk Lee (Hyun Dai Sports Wear) counterfeit case.

**Bryan J. Farrell** (Northern District of Georgia), by ATF Director John W. Magaw, for his successful prosecution of *United States v. Colvin C. Hinton, III*, an arson case.

**David Fields** (Central District of California), by FBI Supervisory Special Agent Mary Frances Rook, for his aggressive prosecution of Chi Lau and his associates for Conspiracy to Commit Hobbs Act.

**Thomas L. Fink** (District of Arizona), by Civil Division Assistant Attorney General Frank W. Hunger, for obtaining the criminal conviction of Richard B. Arrotta, a Tucson attorney, on a number of mail fraud charges.



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**Patrick M. Flachs** (Eastern District of Missouri), by Senior Resident Agent Larry Keck and Special Agent Dan Burleson, U.S. Department of the Interior, Fish and Wildlife Service, for the successful prosecutions of *United States v. Leslie Owen Collier* and *United States v. James Bass*, for the indiscriminate poisoning of wildlife.

**Pamela Foa** (Eastern District of Pennsylvania), by U.S. Department of Labor Assistant Special Agent in Charge Melvin R. Gudknecht, Office of Labor Racketeering, for her successful prosecution of Edward Zinner and other defendants for health benefit plan fraud.

**Stephen Freccero** (Northern District of California), by DEA Special Agent in Charge William J. Mitchell, San Francisco Field Division, for his outstanding prosecution of Peter Chant and Phillip Gee on multiple drug charges.

**Joel Friedman**, Deputy United States Attorney and Chief, Organized Crime Division (Eastern District of Pennsylvania), by Duane, Morris & Heckscher Attorney Michael M. Baylson, former United States Attorney for the Eastern District of Pennsylvania, for his successful prosecution of John Stanfa and others on RICO charges.

**Joel Friedman**, Deputy United States Attorney and Chief, Organized Crime Division (Eastern District of Pennsylvania), by Director Frances Fragos Townsend, Office of International Affairs, Criminal Division, for his efforts with the recent Italian delegation which came here to conduct two organized crime trials.

**Hilary W. Frooman** (Central District of Illinois), by FBI Special Agent in Charge Donald E. Stukey, II, for her successful prosecution of Jack Pribble for bank fraud.

**Ernest C. Garcia** (Western District of Texas), by Department of Veterans Affairs Special Agent in Charge Kenneth R. Atkins, Office of Inspector General, for his successful prosecution of *United States v. Robert Lake/Olmos Abatement, Inc.*, a VA contractor who sought reimbursement for fictitious lease costs.

**James Y. Garrett** (Western District of Pennsylvania), by FBI Special Agent in Charge John P. O'Connor, for his efforts in *United States v. Joseph P. Moses, Edmond N.*

*Gaudelli, Catherine Jean Ronschke*, a public corruption tax case.

**Michael Gertzman** (Southern District of New York), by DEA Administrator Thomas A. Constantine, for his efforts in the Julio Carrillo investigation which resulted in the successful prosecution of 37 individuals who were charged with federal racketeering indictments, including drug trafficking and murder.

**Jay Golden** (Southern District of Mississippi), by FBI Special Agent in Charge James Frier, for his successful prosecution of *United States v. John Joseph Vaccaro, et al.*, for RICO, RICO conspiracy, and wire fraud.

**Robert Goldman** (Eastern District of Pennsylvania), by George J. Slich, Vice President Loss Prevention, Zale Corporation, for investigating and prosecuting those responsible for several jewelry store robberies in the Philadelphia area.

**Yonkel Goldstein** (Northern District of California), by Assistant Counsel Lani Gordon, Department of the Navy, Mare Island, California, for his representation of the Department of the Navy in *McCann v. Secretary of the Navy*, an employment discrimination case.

**Yonkel Goldstein** (Northern District of California), by U.S. Coast Guard Retired Captain Stephen P. Plusch, for obtaining a successful summary judgment for the Coast Guard in *Schneider v. Department of Transportation*, a sexual discrimination case.

**Ginny Granade** (Southern District of Alabama), by FBI Special Agent in Charge Nicholas J. Walsh, for her successful prosecution of Leroy Hill for mail fraud.

**Delora Grantham** (Southern District of Georgia), by Colonel Charles H. Wilcox, II, United States Air Force, Chief, General Litigation Division, for her successful defense of *Lester Walker v. Sheila E. Widnall*, a wrongful discharge case.

**Larry Gregg** (Eastern District of Virginia), by Inspector General Roberta L. Gross, NASA, for his successful prosecution of *United States v. Ganapathi, et al.*, a mail fraud case.

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**Sarah Grieb** (Eastern District of Pennsylvania), by United States Postal Inspection Service Inspector in Charge Bruce R. Chambers, Philadelphia Division, for her efforts during the re-trial of Dwight S. Wright, a letter carrier who was charged with attempted negotiation of a compensation check stolen from the United States mail.

**Nancy Griffin** (Eastern District of Pennsylvania), by Counsel Jerome A. Snyder, Department of the Navy, for her outstanding representation in *Myrtle Hill v. John H. Dalton, Secretary of the Navy, and Benjamin Tutt*, a sexual harassment case.

**Leigh Grinalds** (Western District of Tennessee), by Investigator Mike Turner, Jackson Police Department, for his successful prosecution of Frederick Jefferson for murder.

**Barry Gross** (Eastern District of Pennsylvania), by Duane, Morris & Heckscher Attorney Michael M. Baylson, former United States Attorney for the Eastern District of Pennsylvania, for his successful prosecution of John Stanfa and others on RICO charges.

**Stephen F. Gruel** (Northern District of California), by FBI Director Louis J. Freeh, for his vital contributions to the FBI's investigation of Lawrence Wong and others in connection with the theft and trafficking of high-valued computer components in Silicon Valley.

**Jeff L. Hahn**, Support Services Manager (Middle District of Florida), received a certificate of appreciation from Commander V.D. Joosten, USNR, for his support to Guard and Reserve Forces and his direct contribution to the NR FAHRION support of UNITAS XXXVI Cruise.

**Christopher Hall** (Eastern District of Pennsylvania), by George J. Slich, Vice President Loss Prevention, Zale Corporation, for investigating and prosecuting those responsible for several jewelry store robberies in the Philadelphia area.

**Frank Hall**, Director of Administration (Middle District of Florida), received a certificate of appreciation from

Commander V.D. Joosten, USNR, for his support to Guard and Reserve Forces and his direct contribution to the NR FAHRION support of UNITAS XXXVI Cruise.

**Christine B. Hamilton** (Eastern District of North Carolina), by Special Agent in Charge Greg A. Shubert, United States Department of Agriculture, for her efforts during the investigation of Ricky Lee Grove, et al., in which Mr. Grove and 18 others were convicted of trafficking in food stamps, conspiracy to distribute cocaine, and the unlawful possession of firearms. Ms. Hamilton was also recognized for her efforts in the case against Wayne Simmons. Mr. Simmons was charged with drug and food stamp trafficking, and 17 other people were charged and convicted of drug trafficking.

**Rita Harmon**, Paralegal (Eastern District of Michigan), by EOUSA Director Carol DiBattiste, for providing information concerning cases in her district to assist in the efforts to transfer property from the U.S. Marshals Service to the Treasury Department.

**Nancy Hart** (District of New Hampshire), by Fred A. Wentworth, the victim, for her successful prosecution of German Bustamante, Herbert C. Butler, and Clark Sutton for conspiracy to commit wire fraud.

**Amy R. Hay** (Western District of Pennsylvania), by Department of Veterans Affairs Senior Attorney Philip P. O'Connor, Jr., for her outstanding representation in *Robert W. Laing, Jr. v. United States of America*, a medical malpractice case.

**Leslie K. Herje** (Western District of Wisconsin), by United States Court of Appeals Clerk Thomas F. Strubbe, for her efforts in collecting a sanction imposed on Winston Smart for a frivolous appeal and contumacious conduct thereafter.

**Rebecca Hildago** (Eastern District of Virginia), by Chief of Police William K. Stover, Arlington County Police Department, for her successful prosecution of the William "Fat Bill" Roberts crack distribution case.

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**Norma Holland**, Paralegal Secretary (Eastern District of North Carolina), by Resident Agent in Charge Patrick C. Smith, United States Secret Service, for her efforts in *United States v. Christopher Sanders and Steven Diacont*, a counterfeit currency case.

**Jay Holtmeier** (Southern District of New York), by DEA Administrator Thomas A. Constantine, for his efforts in the Julio Carrillo investigation which resulted in the successful prosecution of 37 individuals who were charged with federal racketeering indictments, including drug trafficking and murder.

**Candiss L. Howard** (Northern District of Georgia), by ATF Special Agent in Charge Richard C. Fox, for her successful prosecution of Jason Byron Berry and Terry Charles Williams who were charged and have pled guilty to three armed carjackings using firearms which were stolen during shipment from an interstate common carrier. These carjackings involved the transportation of stolen firearms across a state boundary, the transportation of a stolen motor vehicle across a state boundary, one murder, and three kidnappings and robberies.

**Margaret Hutchinson** (Eastern District of Pennsylvania), by General Counsel Mary Lou Keener, Department of Veterans Affairs, for her efforts with the Valley Forge Flag matter, a complex Freedom of Information Act case.

**Michael Ivory** (Western District of Pennsylvania), by Lieutenant Dennis Orr, Millcreek Township Police Department, for his successful prosecution of Jason Smith, Frederick Kent, Sean Gannon, and Mark Cunningham for conspiracy to possess with the intent to distribute and distribution of marijuana.

**Craig Jacobsen** (Northern District of California), by DEA Special Agent in Charge William J. Mitchell, San Francisco Field Division, for his outstanding prosecution of Peter Chant and Phillip Gee on multiple drug charges.

**Craig Jacobsen** (Northern District of California), by FBI Supervisory Special Agent Lillian P. Zilius, Gang Task Force, for his successful prosecution of Kevin Paul Woodruff for four counts of violation of Title 18, 1951 (a), Interference with Interstate Commerce.

**Sonia Jaipaul**, Executive AUSA (Eastern District of Pennsylvania), by United States Marshal Alan D. Lewis, Eastern District of Pennsylvania, for her assistance and expertise in developing procedures to examine criteria and qualifications of a number of law firms applying to serve the Seized Assets Division of the United States Marshals Service, Eastern District of Pennsylvania.

**Robert Jaspén** (Eastern District of Virginia), by ATF Associate Chief Counsel for Litigation Imelda M. Koett, for his successful defense of *Karl David, et al.*, v. *Kenneth G. Mosley, et al.*, a Bivens case.

**Christopher Johnson** (Central District of California), by Los Angeles County District Attorney Gil Garcetti, for his successful prosecution of *United States v. Gary Mok* on two counts of extortion under the Hobbs Act, Violation of Title 18, U.S. Code, Section 1951. Prior to pleading guilty to these charges, Mok resigned his position as a Senior Investigator in the District Attorney's office.

**Jerry Johnson**, Law Enforcement Coordinator (Southern District of Illinois), by Stuart D. Stotts, Director of Planning and Training, East Saint Louis Police Department, for his efforts with "Ameritech Cellular Patrol," "Explorer Post #411," and "Citizen's Police Academy," three programs implemented subsequent to the beginning of the Community Oriented Policing Unit in East Saint Louis.

**John N. Joseph** (Eastern District of Pennsylvania), by General Services Administration's Counsel to the Inspector General Kathleen S. Tighe, for his efforts with the proposed settlement with Canteen Corporation, a False Claims Act case.

**George M. Kelley, III** (Eastern District of Virginia), by Associate Director Timothy May, Department of Veterans Affairs, for representing the Department of Veterans Affairs in a Title VII discrimination case tried in Norfolk.

**George M. Kelley, III** (Eastern District of Virginia), by Director Gary W. Allen, Torts Branch, Civil Division, DOJ, for his efforts in numerous admiralty cases.



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**Dennis M. Kennedy** (Eastern District of Virginia), by Assistant Secretary for Fish and Wildlife and Parks George T. Frampton, Jr., Department of the Interior, for his involvement in the efforts of various land management agencies to protect archeological resources through vigorous enforcement of the Archeological Resources Protection Act.

**Patricia Kenney** (Northern District of California), by U.S. Army Colonel John P. Galligan, Chief, Litigation Division, Arlington, Virginia, for her extraordinary efforts in representing the interests of the Army in *Jones v. United States*, a wrongful birth case under the Federal Tort Claims Act.

**Rita Klemp** (Western District of Wisconsin), by Detective Captain Kenneth R. Manthey, Portage Police Department, for her successful prosecution of Harvey Wing and Joey Hicks on arson charges.

**Frank Labor** (Eastern District of Pennsylvania), by Duane, Morris & Heckscher Attorney Michael M. Baylson, former United States Attorney for the Eastern District of Pennsylvania, for his successful prosecution of John Stanfa and others on RICO charges.

**Wayne Lamprey** (Northern District of California), by Secret Service Acting Special Agent in Charge Leroy G. Dal Porto, San Francisco Field Office, for his successful prosecution of Kenneth Steve John who pled guilty under Rule 20 to violations of federal bank fraud, mail fraud, and money laundering.

**Tracey Lankler**, Legal Counsel Attorney (Executive Office for United States Attorneys), by Personnel Officer Marilyn Quinones, Southern District of New York, for providing timely, expert advice on disciplinary and adverse actions.

**Elizabeth J. Larin** (Eastern District of Michigan), by Colonel Randolph Buck, U.S. Army, District Engineer, for her efforts in *Frankie Jones v. United States*, a Federal Tort Claims Act case.

**M. Hannah Lauck** (Eastern District of Virginia), by Superintendent Colonel M. Wayne Huggins, Department

of State Police, Commonwealth of Virginia, for her successful prosecution of Anthony Lee King for possession of chemicals that make up methamphetamine.

**Thomas L. LeClaire** (District of Arizona), by Superintendent Robert L. Arnberger, Grand Canyon National Park, for his tremendous support and hard work in the Grand Canyon Closure Incident in November 1995.

**Rhoda "Tippy" Lesh**, Paralegal (Western District of Pennsylvania), by Lieutenant Dennis Orr, Millcreek Township Police Department, for her efforts in the case against Jason Smith, Frederick Kent, Sean Gannon, and Mark Cunningham who were convicted of conspiracy to possess with the intent to distribute and distribution of marijuana.

**Jennifer Lum** (Central District of California), by FBI Special Agent in Charge Charlie J. Parsons, for her successful prosecution of *United States v. Marcie Marie Hulett*, an embezzlement case.

**John D. Lyons, Jr.** (Northern District of California), by NASA Inspector General Roberta L. Gross, Washington, D.C., for his successful prosecution of George L. Smith and Smith Engineering and Contract Services, Inc., for contract fraud.

**Paul Mansfield** (Eastern District of Pennsylvania), by Duane, Morris & Heckscher Attorney Michael M. Baylson, former United States Attorney for the Eastern District of Pennsylvania, for his successful prosecution of John Stanfa and others on RICO charges.

**George Martin** (Southern District of Alabama), by Alex Bunin, Federal Defenders Organization, for the brief he wrote in *United States v. Dewey Wayne Salter*, a mail/wire fraud and money laundering case.

**Anne-Christine Massullo** (Northern District of California), by District Inspector General for Audit Gary Albright, Department of Housing and Urban Development, for her efforts in the case against DKD Property Management, Inc., for its improper taking of project assets during mortgage loan default.

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**Anne-Christine Massullo** (Northern District of California), by FBI Special Agent in Charge Jim R. Freeman, for her successful defense of the FBI in *Delbert Wyatt v. United States of America*, a Federal Tort Claims Act case.

**Anne-Christine Massullo** (Northern District of California), by United States Postal Service Consumer Protection Law Attorney Rodney Thomas Gould, for obtaining a temporary restraining order in a civil mail fraud action against Spitfire Trading Company Limited which falsely billed businesses for newspaper employment advertisements.

**Virginia A. Mathis**, Chief AUSA (District of Arizona), by Superintendent Robert L. Arnberger, Grand Canyon National Park, for her tremendous support and hard work in the Grand Canyon Closure Incident in November 1995.

**Douglas B. Maynard** (Southern District of New York), by DEA Administrator Thomas A. Constantine, for his efforts in the Julio Carrillo investigation which resulted in the successful prosecution of 37 individuals who were charged with federal racketeering indictments, including drug trafficking and murder.

**Patrick McInerney** (Western District of Missouri), by DOJ Criminal Division Chief Paul E. Coffey, Organized Crime and Racketeering Section, for his continued outstanding success in the prosecution of James Vest who pled guilty to murder and related offenses and agreed to testify against his brothers at their upcoming trials.

**Theodore Meeker** (District of Hawaii), by U.S. Coast Guard Captain J.P. Wiese, for his efforts in *Greyslock v. Coast Guard, et al.*, a Freedom of Information Act case.

**Zane Memeger** (Eastern District of Pennsylvania), by George J. Slich, Vice President Loss Prevention, Zale Corporation, for investigating and prosecuting those responsible for several jewelry store robberies in the Philadelphia area.

**Gerard Mene** (Eastern District of Virginia), by United States Marshals Service General Counsel Deborah C.

Westbrook, for his outstanding representation of the United States Marshals Service in *United States v. Shanho'tz*, a property damage case.

**Richard Mentzinger** (Eastern District of Pennsylvania), by Assistant General Counsel Peter M. Campanella, Department of Housing and Urban Development, for his efforts in *Miriam Holloway, et al., v. Jack Kemp, et al.*, a Lead-Based Paint Poisoning Prevention Act case.

**James Metcalfe** (Eastern District of Virginia), by Chief Paul E. Coffey, Organized Crime and Racketeering Section, Criminal Division, DOJ, for his efforts in the investigation and prosecution of corrupt officials of the Marine Engineers Beneficial Association. These officials were convicted in the Eastern District of Virginia of conspiracy to defraud the United States and the prosecutions in Virginia assisted the Organized Crime Section in obtaining convictions in the District of Columbia.

**Rosemary Casey Meyers** (Eastern District of Missouri), by David H. Rubin, Mercantile Bank, for her successful prosecution of Marc Nattier for embezzlement, and Eldon Nattier and James Coley for conspiracy to embezzle, money laundering, and making false statements in order to receive food stamps.

**Lawrence Middleton** (Central District of California), by Coca-Cola USA President Jack L. Stahl, for his successful investigation and prosecution of several defendants charged with wire fraud, mail fraud, conspiracy, and trafficking in counterfeit goods, in a case involving the counterfeiting of Coca-Cola in Southern California in December 1993.

**Brian Miller** (Eastern District of Virginia), by Inspector General Roberta L. Gross, NASA, for his successful prosecution of *United States v. Ganapathi, et al.*, a mail fraud case.

**Eileen Coffey Moore** (Eastern District of North Carolina), by Dr. Jack D. Amis, for successfully defending Dr. Amis in *Delija Marts v. United States*, a complex medical case which involved an operation performed by Dr. Amis while on active duty in the United States Navy.

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**Eileen Coffey Moore** (Eastern District of North Carolina), by U.S. Army Colonel Michael J. Brennan, M.D., for her outstanding litigative support in numerous medical malpractice cases arising from patient care provided at Womack Army Medical Center.

**James L. Morford** (Northern District of Ohio), by Medina County Drug Task Force Agent in Charge Frederick E. Wolf, for his aggressive pursuit of pretrial agreements and thorough preparation for the civil forfeiture trial involving Joseph Viscomi, Linda Viscomi, and Eusebio Vela. In December 1993, Medina County Drug Task Force agents seized \$132,087.00 in United States currency, a residence, and five motor vehicles. The seizures were federally adopted and the forfeiture actions were handled by Mr. Morford.

**Sherry L. Muncy** (Northern District of West Virginia), by Regional Special Agent in Charge of the U.S. Forest Service Jonathon Marsh, Eastern Region, for her successful prosecution of *United States v. Tingle*. Tingle was convicted of one count of assaulting, intimidating, and interfering with a District Ranger and one count of willfully causing damage in excess of \$100 to a 1990 Jeep Cherokee which was the property of the United States. This was the first successful felony prosecution of a Forest Service case in the Northern District of West Virginia.

**Colleen Murphy** (Northern District of Texas), by Sergeant John M. Faber, Arlington Police Department, for her successful prosecution of *United States v. Michael Wayne Route*, a bank fraud case. Mr. Route had an extensive criminal history for fraud-related offenses including two federal and numerous state convictions.

**Maria E. Murphy** (Southern District of Alabama), by FBI Special Agent in Charge Nicholas J. Walsh, for her efforts in the trial and sentencing of Frank James Welch, Jr., who was sentenced to life without parole, plus thirty years, following his conviction of carjacking and weapons-related offenses.

**Ross W. Nadel** (Northern District of California), by FBI Director Louis J. Freeh, for his successful prosecution of Shoo-Meil Gwei and Yilun Thai for art fraud.

**Sharon Novitsky** (District of Arizona), by Chief Deputy of the Maricopa County Attorney's office Paul W. Ahler, for her preparation for a hearing on DNA issues in *State of Arizona v. Richard Djerf*, a quadruple homicide case that she worked on while she was a Deputy Maricopa County Attorney. After leaving the Maricopa County Attorney's office to become an AUSA, she continued to work closely with the Deputy County Attorneys and DPS Criminalists assigned to the case. Due to her preparation, the judge commented that the hearing provided the best record of any DNA case in the entire state.

**William Nugent** (Eastern District of Pennsylvania), by Director Frances Fragos Townsend, Office of International Affairs, Criminal Division, for his efforts with the recent Italian delegation which came here to conduct two organized crime trials.

**Charles O'Connor** (Northern District of California), by Department of Energy Acting Director Steven W. Webber, Division of Lands, for his efforts in the condemnation case of *United States v. Donald J. Dal Porto, et al.* Mr. O'Connor's preparation is credited for achieving a settlement that was less than a previous offer.

**Steven Pray O'Connor** (Western District of Wisconsin), by United States Air Force Colonel Daniel P. Hass, Chief, Tort Claims & Litigation Division, Air Force Legal Services Agency, for his outstanding work in the defense of *Alexander Bergs, et al., v. United States*, a medical malpractice case arising from birth injuries.

**Patrick K. O'Toole** (Southern District of California), by Attorney General Janet Reno, for his efforts with Pastors for Peace, a program which strikes a balance between the exercise of the First Amendment rights and the legitimate concerns of law enforcement. Mr. O'Toole assisted in the courtroom aspects of this program.

**Michael C. Olmsted** (Northern District of New York), received a commendation from the United States Department of Defense, Office of Inspector General, for his outstanding efforts in the prosecution of Department of Defense procurement fraud investigations.



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**Janet L. Parker** (Eastern District of Michigan), by DOJ Pardon Attorney Margaret Colgate Love, for her helpful response to their request for comments on the Gahagan pardon application.

**Carl E. Perry** (Western District of Louisiana), by Clyde H. Sellers, Chief, Real Estate Division, Department of the Army, New Orleans, for his efforts with land condemnation cases.

**Steve Petri** (Southern District of Florida), by Executive Vice President and Special Counsel to the Chairman Richard E. Halperin, MacAndrews & Forbes Holdings, Inc., for his professionalism and sensitivity in handling the threats directed toward Ronald O. Perelman and Bruce Slovin and members of their respective families.

**Joseph G. Poluka** (Eastern District of Pennsylvania), by FDIC Deputy Inspector General for Investigations Carolyn R. Ryals, for his successful prosecution of *United States v. Robert F. Gallagher, Sr., a/k/a "John H. Heller,"* a bank fraud case.

**Adrienne Rabinowitz** (Southern District of Florida), by Executive Vice President and Special Counsel to the Chairman Richard E. Halperin, MacAndrews & Forbes Holdings, Inc., for her professionalism and sensitivity in handling the threats directed toward Ronald O. Perelman and Bruce Slovin and members of their respective families.

**Mark Recktenwald** (District of Hawaii), by DEA Assistant Special Agent in Charge Sidney A. Hayakawa, for his successful prosecution of a major marijuana cultivation operation based on the Big Island of Hawaii.

**Bruce Reppert** (Southern District of Illinois), by Stuart D. Stotts, Director of Planning and Training, East Saint Louis Police Department, for his efforts with "Ameritech Cellular Patrol," "Explorer Post #411," and "Citizen's Police Academy," three programs implemented subsequent to the beginning of the Community Oriented Policing Unit in East Saint Louis.

**Steven D. Rich** (District of South Dakota), by FBI Supervisory Senior Resident Agent Charles W. Draper,

for his professionalism in handling three drug related cases.

**Sara R. Robinson** (Central District of California), by Bureau of Prisons Regional Counsel Harlan W. Penn, for successfully defending Shandor and Hanssin in *Jackson v. Shandor and Hanssin*, a Bivens case.

**Eduardo G. Roy** (Northern District of California), by NASA Inspector General Roberta L. Gross, Washington, D.C., for his successful prosecution of George L. Smith and Smith Engineering and Contract Services, Inc., for contract fraud.

**Eduardo G. Roy** (Northern District of California), by U.S. Customs Service Special Agent in Charge Rollin B. Klink and by United States Secret Service Acting Special Agent in Charge Leroy Dal Porto, for his successful prosecution of Sylvanus Obinna Elekwachi who was found guilty of one count of violation of 18 USC 472, Possession of Counterfeit United States Obligations and/or Securities.

**Alan M. Salsbury** (Eastern District of Virginia), by Director of Enforcement Robert M. Kruger, Business Software Alliance, for his efforts in *United States v. Roger Brehm*, a criminal copyright infringement case.

**Marian Salutz**, FIF Auditor (District of Arizona), by District of Arizona United States Trustee Adrienne Kalyna, for her efforts in the case against Jeff Bendix who was convicted of bankruptcy fraud.

**Randy Seiler** (District of South Dakota), by Special Agent in Charge Robert J. Hillman, Great Plains Region of the Department of Agriculture, for his efforts toward the criminal prosecution of Dakota Lean, Inc., and its owners, Martin, Greg, and Deborah Jorgensen, who were convicted of conspiracy, mail fraud, wire fraud, and misbranding of meat products.

**Peter Sexton** (District of Arizona), by District of Arizona United States Trustee Adrienne Kalyna, for his successful prosecution of Jeff Bendix for bankruptcy fraud.

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**Jonathan S. Shapiro** (Central District of California), by FBI Special Agent in Charge Charlie J. Parsons, for his successful prosecution of Jeffrey Wayne Lee for wire fraud and impersonation of a federal officer.

**F. Gentry Shelnett** (Northern District of Georgia), by ATF Director John W. Magaw, for his successful prosecution of *United States v. Colvin C. Hinton III*, an arson case.

**Robert E. Skiver** (Eastern District of North Carolina), by U.S. Customs Service Resident Agent in Charge L.M. Flippin, for his work in certain ODETF investigations, specifically the case against the leaders of the Perry Drug Smuggling Organization and the indictment of the leader and nine other members of the Marino Smuggling Organization. Both organizations previously smuggled and distributed multi-tons of marijuana and multi-kilos of cocaine into the Eastern District of North Carolina.

**Peter G. Spivack** (Central District of California), by FBI Special Agent in Charge Charlie J. Parsons, for his successful prosecution of William V. Sanchez and Kenneth L. Green, doing business as Shierson Mansfield Group, Inc., for wire fraud.

**Kathy Stark** (Southern District of Florida), by DOT Director Jan P. Blanton, Executive Office for Asset Forfeiture, for her outstanding coordination with the Treasury Department in circuit forfeiture meetings while on detail to EOUSA.

**Greg Stefan** (Eastern District of Virginia), by IRS Chief T.C. Harris, Special Procedures, for his excellent representation of the IRS in bankruptcy proceedings.

**Lee D. Stein** (District of Arizona), by Superintendent Robert L. Arnberger, Grand Canyon National Park, for his tremendous support and hard work in the Grand Canyon Closure Incident in November 1995.

**Patricia R. Stout** (Northern District of Georgia), by Donald L. Burchett, Chief, Real Estate Division, Department of the Army, Management and Disposal Branch, for her outstanding work on the Lake Sidney Lanier encroachment case, *United States v. Claudette Price*. Ms. Price was ordered to remove her entire resi-

dence from the government's flowage easement at Lake Sidney Lanier. This case was critical to the overall future of the Mobile District Encroachment Program and the U.S. Army Corps of Engineers' ability to protect the integrity of its real estate interest at Lake Sidney Lanier.

**James Sutherland** (District of Oregon), by United States Marshals Service General Counsel Deborah C. Westbrook, for successfully representing the interests of the United States Marshals Service in *Edward Allen v. United States*, a Federal Tort Claims Act case.

**Michelle G. Tapken** (District of South Dakota), by Warden Susan Gerlinski, Federal Prison Camp, Yankton, for her successful prosecution of three inmates for sexually abusing a woman.

**Susan Tarbe** (Southern District of Florida), by Executive Vice President and Special Counsel to the Chairman Richard E. Halperin, MacAndrews & Forbes Holdings, Inc., for her professionalism and sensitivity in handling the threats directed toward Ronald O. Perelman and Bruce Slovin and members of their respective families.

**Mary P. Thorstenson** (District of South Dakota), by FBI Supervisory Senior Resident Agent Charles W. Draper, for her extreme professionalism in handling several cases.

**Eric Tolen** (Eastern District of Missouri), by United States Department of the Interior Regional Solicitor Gina Guy, for his successful efforts in *Robert Chantel v. United States* and *Timothy K. Burns v. United States*, claims for personal injury brought against the United States.

**Cynthia E. Tompkins** (Eastern District of North Carolina), by Missy Tenhet, for her successful prosecution of Ms. Tenhet's ex-husband, Thomas Richard Stitt, who pled guilty to a Criminal Information which charged him with failure to pay legal child support obligations to his son. Stitt was sentenced to three years probation and ordered to pay \$21,000 in restitution.

**Cheryl Tripiett** (Eastern District of Oklahoma), by Social Security Administration Regional Chief and Administrative Law Judge Richard A. Mueller, Region VI, for her efforts in *Welton v. Shirley Chater*, an EEO case.

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**John Trucilla** (Western District of Pennsylvania), by Lieutenant Dennis Orr, Millcreek Township Police Department, for his successful prosecution of Jason Smith, Frederick Kent, Sean Gannon, and Mark Cunningham for conspiracy to possess with the intent to distribute and distribution of marijuana.

**Jim Trump** (Eastern District of Virginia), by Chief of Police William K. Stover, Arlington County Police Department, for his successful prosecution of the William "Fat Bill" Roberts crack distribution case.

**John Ulrich** (District of South Dakota), by Special Agent in Charge Robert J. Hillman, Great Plains Region of the Department of Agriculture, for his efforts toward the criminal prosecution of Dakota Lean, Inc., and its owners, Martin, Greg, and Deborah Jorgensen, who were convicted of conspiracy, mail fraud, wire fraud, and misbranding of meat products.

**Mary Ann Venable**, Paralegal Specialist (Eastern District of Tennessee), by Special Agent in Charge Richard A. Easley, Department of Defense, Southeast Region, Inspector General for Investigations, for her efforts in the government contract fraud cases involving Camel Manufacturing Company, its president, Ben D. Bower, and vice-president, F. Clark Dial, who unlawfully converted \$2.1 million in public funds and supplied DOD with nonconforming protective headgear. Overall recoveries were in excess of \$6 million in restitution and fines to the United States, as well as felony convictions of the president of the company and Camel Manufacturing for their fraudulent activities.

**Robert Ward** (Northern District of California), by U.S. Customs Service Special Agent in Charge Rollin B. Klink, for his successful prosecution of *United States v. Marina Anaya-Herrera*, an international money laundering case that resulted in the forfeiture of \$2.1 million.

**Derrick Watson** (Northern District of California), by U.S. Army Colonel John P. Galligan, Chief, Litigation Division, Arlington, Virginia, for his extraordinary efforts in representing the interests of the Army in

*Jones v. United States*, a wrongful birth case under the Federal Tort Claims Act.

**Seth Weber** (Eastern District of Pennsylvania), by U.S. Department of Labor Assistant Special Agent in Charge Melvin R. Gudknecht, Office of Labor Racketeering, for his successful prosecution of Edward Zinner and other defendants for health benefit plan fraud.

**Julie Werner-Simon** (Central District of California), by Cathy A. Catterson, Clerk of the U.S. Court of Appeals for the Ninth Circuit, for her energy and talent in producing the "Perfecting Your Appeal" videotape which tracks the progress of a hypothetical appeal before the Court from filing to disposition.

**Stephen A. West** (Eastern District of North Carolina), by United States Marine Corps Major General Fred McCorkle, for his successful defense of the United States in *Jennifer Fogel v. United States*, an action brought by a minor military dependent to recover damages for personal injuries allegedly incurred when she was sexually assaulted by a sailor who became intoxicated at a bowling center on a military base.

**Tony West** (Northern District of California), by Sandra W. Huff, Vice President and Secretary of the Rosicrucian Order, for his successful prosecution of John Woods who was found guilty of theft of artifacts from the Order's Egyptian Museum in San Jose.

**J. Gaston B. Williams** (Eastern District of North Carolina), by United States Secret Service Resident Agent in Charge Patrick C. Smith, for his successful prosecution of *United States v. Christopher Sanders and Steven Diacont*, a counterfeit currency case.

**Mary Williams**, Victim-witness Advocate (District of Arizona), by private citizens Bob and JoAnn Hartle, for her efforts in the successful prosecution of Scott Gilbert for false statements and acquisition of a firearm and for false statements in connection with a loan application.



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**Anthony Wzorek** (Eastern District of Pennsylvania), by **George J. Slich**, Vice President Loss Prevention, **Zale Corporation**, for investigating and prosecuting those responsible for several jewelry store robberies in the Philadelphia area.

**Joseph Yablonski** (Western District of Pennsylvania), by **U.S. Customs Service Acting Resident Agent in Charge Michael F. Botta**, for his contributions to the **OCDETF** investigation of **Daniel Anderson**.

**Dennis Zawacki**, Auditor (Eastern District of Pennsylvania), by **FDIC Deputy Inspector General** for

**Investigations Carolyn R. Ryals**, for his accounting knowledge and review of the financial records of *United States v. Robert F. Gallagher, Sr., a/k/a "John H. Heller,"* a bank fraud case.

**Cynthia Zimmerman**, Secretary (Middle District of Pennsylvania), by **Attorney General Janet Reno**, for her outstanding efforts in the investigation and prosecution of *United States v. Ernest D. Preate, Jr.*, a federal mail fraud case. ❖

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## Attorney General Highlights

### Antiterrorism and Effective Death Penalty Act of 1996

On April 24, 1996, President Clinton signed into law the "Antiterrorism and Effective Death Penalty Act of 1996." On May 10, 1996, EOUSA Director Carol DiBattiste forwarded a copy of the legislation and the President's statement to United States Attorneys. The Department is preparing an overview of the Act, highlighting significant changes in the law. United States Attorneys' offices will be impacted by many sections of the Act and should pay particular attention to the changes in restitution laws. Detailed policies for United States Attorneys' offices are being prepared by EOUSA's Financial Litigation Staff. Please contact **Lynne Solien**, EOUSA Financial Litigation staff, (202)616-6444, for assistance on this issue. If you would like a copy of the legislation or the President's statement, please contact the *United States Attorneys' Bulletin* staff, (202)514-3572. ❖

### AG Speaks Out on Gangs and Violent Crime

On May 15, 1996, Attorney General Janet Reno issued the following statement regarding gangs and our federal anti-crime initiative against violent crime: "The days when gangs could feel immune from law enforcement are over. We are attacking their organizations from top to bottom and putting them out of business . . . hundreds of Los Angeles street gang members have been prosecuted. Related gang-operations in Detroit, Omaha, Kansas City, Las Vegas, and other cities have been dismantled. Attacking violent crime, especially youth crime, is our highest priority." On May 16, 1996, in a national gang drug trafficking sweep in the Central District of California, 49 defendants were charged, stemming from a pair of investigations targeting criminal activities of Los Angeles street gangs. In addition to seven indictments returned in Los Angeles, charges were filed in Minneapolis; Oklahoma City; and Jackson, Mississippi, including Mexican suppliers, Los Angeles-based wholesalers, and distributors from around the country. The Los Angeles, Minneapolis, and Jackson charges

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arise from an investigation of criminal street gang activity centered in a housing project, and these cases follow convictions of ten Cedric McGill narcotics trafficking organization members, part of that same investigation. ❖

## Immigration Control and Financial Responsibility Act of 1996

On May 2, 1996, the Senate passed the "Immigration Control and Financial Responsibility Act of 1996" to approve the Clinton Administration's comprehensive immigration strategy to reverse decades of neglect and restore the rule of law to the immigration system. In a statement, President Clinton said, "I am pleased that the Senate has endorsed our strategy with legislation that answers my Administration's call for tougher penalties for alien smugglers, criminal aliens, and manufacturers and sellers of fraudulent documents. The Senate bill also supports our plan to continue to increase the size of our Border Patrol and provides the Justice Department with new tools to fight illegal immigration." ❖

## President's Law Day Proclamation

On May 1, 1996, in a proclamation by President Clinton, the role our legal system plays in maintaining our country's greatness, the precious freedoms our citizens have enjoyed since America's beginnings, the crucial role of the law in ensuring our security and prosperity were recognized and honored. He said, "... as we confront the threats of domestic and international terrorism and the violence that plagues our neighborhoods and schools, it is more important than ever for Americans to understand the extraordinary legacy left to us by our

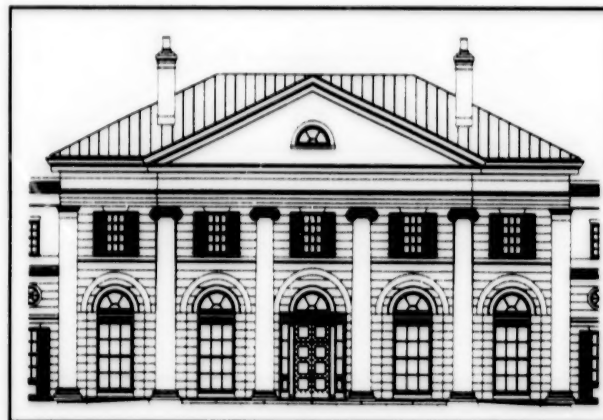
Founders and to reaffirm the ideals of liberty, equality, and justice. The theme for Law Day 1996, "The Constitution: The Original American Dream," emphasizes that the doctrines set forth in our Constitution have made our progress and unparalleled history of freedom possible, and that the Constitution is a model for other nations as the purest expression of American law, and as the ultimate authority for our statutes, judicial decisions, and Executive actions." A highlight of the Middle District of Louisiana's Law Day celebration appears on page 70. If you would like a copy of the President's Proclamation, please contact the *United States Attorneys' Bulletin* staff, (202)514-3572. ❖

## DOJ's National Methamphetamine Strategy

In April 1996, Attorney General Janet Reno and Director Barry McCaffrey, Office of National Drug Control Policy, forwarded to President Clinton the "National Methamphetamine Strategy," which assesses the threat, identifies the issues, and draws an action plan for future efforts to avert the spread of this dangerous drug. The strategy sets forth the Department's agenda, which has involved the Attorney General directing each United States Attorney to coordinate a multi-disciplinary effort to assess the methamphetamine problem in districts and to develop an implementation plan, and federal law enforcement to attack the international organizations predominant in methamphetamine trafficking and the importation of chemicals used to make methamphetamine in the United States. The Department will also send additional investigative and prosecutive resources to the Southwest Border and to rural areas. If you would like a copy of this document, please contact the Clearinghouse for Office of National Drug Control Policy at (800)666-3332. ❖

## Ground Breaking for the National Advocacy Center

On Friday, May 3, 1996, a Ground Breaking Ceremony was held at the University of South Carolina site of the Department of Justice's National Advocacy Center (NAC). In attendance were Attorney General Janet Reno, EOUSA Director Carol DiBattiste, National District Attorneys Association President Michael P. Barnes, United States Senator Ernest F. Hollings, City of Columbia Mayor Robert D. Coble, and University of South Carolina President John M. Palms. The center will provide training in advocacy skills and management of legal operations. Attorney General Reno declared, "The key elements in the establishment of the center are partnership and cooperation among federal, state, and local prosecutors . . . This cooperative effort includes a full range of training activities from such simple matters as the sharing of instructors and materials to the delivery of integrated courses which are targeted at all prosecutors." NAC will contain lecture halls, a conference room that can be subdivided into smaller meeting rooms, training courtrooms, a dining hall with



*Engineering Drawing of National Advocacy Center Building.*

kitchen, and guest rooms. The facility will be operated by EOUSA and will employ individuals from the Department of Justice and the National District Attorneys Association. The facility will begin to present programs in April 1998. EOUSA Director Carol DiBattiste said, "The new facility will enable the Department to expand its education efforts, offer the latest technology for training federal prosecutors, and train in partnership with state and local prosecutors." The NAC will serve Assistant United States Attorneys,



*City of Columbia Mayor Coble, Attorney General Reno, University of South Carolina President Palms, Senator Hollings, and NDAA President Barnes break ground at NAC.*



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attorneys from other components of DOJ, attorneys employed by other federal agencies, and state and local prosecutors. USC President John M. Palms said, "The University is proud to have been chosen as the site for this endeavor to train some of the nation's best legal minds. We look forward to sharing the resources of a major comprehensive university with visitors from around the country and fostering cooperative intellectual efforts." ♦

## Unauthorized Disclosure of Investigative Information

On April 12, 1996, Attorney General Janet Reno forwarded a memo to UNABOM investigators and prosecutors, and on April 12, 1996, EOUSA Director Carol DiBattiste forwarded it to United States Attorneys, concerning the unauthorized disclosure of UNABOM investigative information. Media reports concerning the UNABOM matter have purported to disclose very detailed information relating to the investigation, and some of those reports asserted that the information stemmed from sources involved in the investigation. These disclosures, whether true or not, are completely inappropriate, damaging to the investigation, and inconsistent with the manner in which professional criminal investigation is undertaken ♦

## First Anniversary of the International Law Enforcement Academy

On April 21 and 22, 1996, Attorney General Reno visited Budapest, Hungary, to confer with European ministers and to help mark the first anniversary of the International Law Enforcement Academy—a multinational police training program initiated by the United States and

Hungary to encourage the development of professional law enforcement agencies in the world's emerging democracies and to serve as a model to meet the growing problem of transnational crime. The Attorney General said, "Crime does not respect borders. There are individuals in Eastern Europe directing the commission of crimes in the United States." The International Academy's activities are supported by law enforcement components of DOJ, the State Department, and the Treasury Department. Members of the U.S. delegation included the Attorney General; Assistant Secretary of State for International Narcotics and Law Enforcement Affairs Robert Gelbard; Assistant Secretary of State for Diplomatic Security Eric Boswell; U.S. Secret Service Director Eljay Bowron; Internal Revenue Service Commissioner Margaret Milner Richardson; Director of the Bureau of Alcohol, Tobacco and Firearms John Magaw; Deputy Director of the Drug Enforcement Administration Stephen Greene; and Director of the Federal Law Enforcement Training Center Charles Rinkevich. ♦

## AG Calls on Congress to Reauthorize the Hate Crime Statistics Act

On March 12, 1996, Attorney General Reno called on Congress to reauthorize the Hate Crime Statistics Act, which enables the Justice Department to collect statistics on hate crimes from state and local enforcement agencies. Senator Orrin Hatch (R-Utah), Chairman of the Senate Judiciary Committee, and Senator Paul Simon (D-Illinois) are expected to introduce legislation to reauthorize the Act, signed into law by President Bush in 1990 and expired in December 1995. "Although the Justice Department has continued to collect data on hate crimes from state and local law enforcement, Congressional reauthorization will demonstrate the national commitment to ensure that this work goes forward," Reno said. ♦

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# United States Attorneys' Offices/ Executive Office for United States Attorneys

## United States Attorney Appointments

### Southern District of Florida

**O**n June 1, 1996, William A. Keefer became the Attorney General appointed United States Attorney for the Southern District of Florida. ❖

### Middle District of Georgia

**O**n May 22, 1996, H. Randolph Aderhold became the Attorney General appointed United States Attorney for the Middle District of Georgia. ❖

### Northern District of Mississippi

**O**n March 21, 1996, Calvin "Buck" Buchanan was nominated by President Clinton as United States Attorney for the Northern District of Mississippi. ❖

### District of South Carolina

**O**n May 18, 1996, J. Rene' Josey was nominated by President Clinton and was appointed by the court, pending his confirmation by the Senate, as United States Attorney for the District of South Carolina. ❖

### Western District of Texas

**O**n April 4, 1996, President Clinton nominated United States Attorney Bill Blagg as the United States Attorney for the Western District of Texas. He was court-appointed effective March 31, 1996, pending confirmation by the Senate. ❖

## Honors and Awards

### United States Attorneys' Offices Receive DOJ Volunteer Award

**T**he United States Attorneys' offices have collectively been named recipients of the Department of Justice Volunteer Award. Attorney General Reno announced the award at a ceremony to honor the employees on April 18, 1996. EOUSA Director Carol DiBattiste attended the ceremony and accepted the award on behalf of the United States Attorneys' offices and EOUSA. Examples of volunteers who donated their time included mentors in adopt-a-schools, volunteers in paint-a-thons, and public safety volunteers who help the less fortunate. Names of the volunteers from the United States Attorneys' offices appear below. For further information, please contact Assistant Director Kimberly Lesnak, EOUSA's LECC/Victim-Witness Staff, (202)616-6792. ❖



*EOUSA Director Carol DiBattiste accepts Volunteer Award on behalf of the United States Attorneys' offices.*

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## National Volunteer Award Recipients

### **Northern District of Alabama**

John Charles Bell  
Jo B. Patterson

### **Eastern District of Arkansas**

Linda B. Lipe

### **Northern District of California**

Kathleen M. Cannuli  
Carol Molloy  
Nandor J. Vadas

### **Central District of California**

Monica Bachner  
Sean R. Berry  
Joseph Brandolino  
Ronald L. Cheng  
Lawrence H. Cho  
Jacqueline Chooljizin  
Ira A. Daves  
Patricia Davies  
Grace Denton  
Jack DiCanio  
Patricia Donahue  
Kimberly A. Dunne  
Micheal W. Emmick  
Christine Ewell  
Aenlle-Rocha Fernando  
David Fields  
Clara Ford  
Mark Hardiman  
Marc Harris  
Nathan Hochman  
Benjamin Jones  
Jeffrey W. Johnson  
Pamela L. Johnston  
Charles L. Kreindler  
Mavis Lee  
Rebecca S. Lonergan  
Ronni MacLaren  
Alejandro Mayorkas  
Sally L. Meloch  
Marcellus McRae  
Beverly O'Connell

Tomson T. Ong  
Christopher Painter  
Claire Philips  
John M. Potter  
Bruce Riordan  
David J. Schindler  
Spurgeon E. Smith  
Chris Tayback  
Maureen A. Tighe  
Patrick Walsh  
James P. Walsh, Jr.  
Debra A. Yang

### **Southern District of California**

Mary C. Dolan  
Pamela R. Filipelli

### **District of Columbia**

Denise M. Abrahams  
Anthony M. Alexis  
Jeff Beatrice  
Edward G. Burley  
T. Preston Burton  
Ann Carroll  
Anjali Chaturvedi  
Christine E. Chick  
Erik Christian  
Gary H. Collins  
Jennifer M. Collins  
Carol Collins-Koroina  
Rudolph Contreras  
Rena P. Cooke  
James Cooper  
M. Evan Corcoran  
Ken Cowgill  
John D. Crabb  
Dee Davis  
Derrial S. Davis  
Larry D. Dew  
Ron Dixon  
John Dominquez  
Steve Durham  
Mark J. Ehlers  
Sherri Evans

Jay Farris  
Hollis Fleischer  
Wykema Fletcher  
Antonio Flourmoy  
David A. Foster  
Daniel S. Friedman  
Douglas F. Gansler  
Wykema Gardner  
Barry D. Glickman  
Silvia Gonzelez-Roinan  
Gregory A. Gruber  
Charles Hall  
Kim E. Hall  
Linda C. Harris  
Todd Harrison  
Nathan C. Hawkins  
Tim Heaphy  
Bruce R. Hegyi  
Albert Herring  
Thomas J. Hibarger  
Eric Holder, Jr.  
Brenda J. Horner  
Paul Howes  
Pamela D. Huff  
L'Tanjua R. Jackson-McGinnis  
Iola Jenkins  
J. Ramsey Johnson  
Terence J. Keeney  
Roger L. Kemp  
Glenn L. Kirschner  
Andrew Klein  
Doug Klein  
Douglas K. Kline  
Carolyn Kurtzack Kolben  
Mark Lancaster  
Margaret M. Lawton  
Mary Lou Leary  
Michael Levy  
Debra Long-Doyle  
Edith S. Marshall  
Steven J. McCool  
Mary B. McCord  
Robert S. Mueller  
Michelle Mumm



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**District of Columbia (cont'd)**

Richard Nelson  
Suzanne C. Nyland  
William J. O'Malley  
Kevin A. Ohlson  
Leutrell Osborne  
Nancy Page  
Channing D. Phillips  
John P. Pierce  
Ann E. Pings  
Elizabeth Poteat  
Paul A. Quander  
D. Shane Read  
Steven E. Rindner  
Richard Roberts  
Steven J. Roman  
Latonya D. Rouse  
Heidi L. Rummell  
Dave Schertler  
Sherri L. Schornstein  
Tina E. Sciocchetti  
Cheryl Sims  
DeMaurice Smith  
Renate D. Staley  
Christine Sykes  
Kimberly Tarver  
Barbara J. Valliere  
Jessica Van Landingham  
Kenneth L. Wainstein  
Jane Weaver  
Brad Weinsheimer  
Peter H. White  
Kenneth F. Whitted  
Monty Wilkinson  
Brenda C. Willimas  
Pat M. Woodward  
Chun T. Wright  
Shanlon Wu  
Frederick W. Yette  
Thomas E. Zeno

**Southern District of Florida**

Carol DeGraffenreidt  
Diane Freeland  
Adalberto Jordan  
Chris McAliley  
Diane Patrick

Adrienne Rabinowitz  
Scott Ray  
Barbara Schwartz  
Daryl Trawick

**Middle District of Florida**

Virginia M. Covington  
Jeffrey Hahn  
Gregory N. Miller  
Patricia B. Nadiak

**District of Idaho**

Monte J. Stiles

**Northern District of Illinois**

Patrick Collins  
Janet McCarthy  
Joellen Toth

**Southern District of Indiana**

Linda R. Birdcell  
Natalie D. Davis  
Betty Dickey  
Linda A. Van Horn  
R. Jane Young

**Northern District of Iowa**

Kimberly M. Kudej  
Dorilys A. Schlichting  
Debra L. Nash

**Southern District of Iowa**

Don C. Nickerson

**District of Kansas**

Shirley Ackerman  
Debra Austin  
Michael Christensen  
Phyllis Creed  
Connie Dearmond  
Joan Gay  
Annette Gurney  
Patti Korwin  
Emily Metzger  
Nedra McNeil  
Sharon Mize  
Robin Moore

Sean Moore  
Randall K. Rathbun  
Elizabeth Rogers  
Robin Rowland  
Virginia Ruedebusch  
Richard Schodorf  
Lori Sutton  
Chris Watney  
Jackie Williams  
Mary Woo

**Eastern District of Kentucky**

Mark Wohlander

**Eastern District of Louisiana**

Walter F. Becker, Jr.  
Karen P. Dixon  
Michael W. Magner  
Richard W. Westling

**Middle District of Louisiana**

Richard B. Launey

**Western District of Louisiana**

Hattie M. Broussard

**District of Maine**

Nicole S. Hogleund  
Lucy A. Howland

**Eastern District of Michigan**

Davon Allen  
Christine D. Bloomfield  
Michael Carithers  
James Chavis  
Ellen Christensen  
Patrick Corbett  
Krishna Dighe  
Ed Ewell  
Jane Freeman  
Bonita Gardner  
Karen Gibbs Ernst  
Saul A. Green  
Lynn Helland  
Jacqueline Hotz  
Marlene Juhasz  
Linda Jones-Ogletriee

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## National Volunteer Award Recipients (continued)

### Eastern District of Michigan (cont'd)

Janet F. Kiihr  
Renee Kinney-Dove  
Mike Leibson  
Regina McCullough  
Shannon Mitchell  
Blondell Morey  
Linda Parker  
Connie Posey-Harris  
Kelvin Scott  
Tamaya Standifer  
Karen Reynolds  
Beryl Robbins  
Craig Weier  
Christopher Yates

### Western District of Michigan

Mark V. Courtade  
Marie E. Jennett

### Western District of Missouri

Colleen Cook  
William L. Mainers  
Deidre R. Stafford  
K. Doreen Rogers  
Kathryn Young

### District of New Jersey

Bryan Blaney  
Brenda Bracy  
Joseph Braunreuther  
Carol Broadway  
Thomas Brown  
Robin Brown-Thompson  
Colette Buchanan  
Renee Bumb  
Scott Christie  
Paula Dow  
Mary Gladney  
Lourdes Gonzales  
Robert Hanna  
Yvonne Hardy-Chrysostom  
Lisa Hatcher  
Noel Hillman

Mary Hunter  
Derrick Hurd  
Sherry Hutchins  
Roberta Klotz  
Yvette D. Mouton  
Jeannie Powell  
Ana Pratts  
Lisa Russell-Charles  
Elizabeth Soares  
Millie J. Stovall  
John Suarez  
Constance Wall  
Stacey Williams  
Amy Winkelman

### District of New Mexico

Kenneth C. Berry  
Brenda J. Winchester

### Eastern District of New York

Gorden Mehler

### Southern District of New York

Ernestine Allen

### Western District of New York

Nell R. Daley  
Richard T. Donovan  
Alberta M. Greco  
Margaret Kelly  
Thomas J. Moulder  
Paula Jo Pierscinski  
Valerie Rose  
John E. Rogowski  
Trini J. Ross  
Nancy J. Schwendler  
Timothy J. Scioli  
Madonna L. Scoville  
Jody L. Wienke  
Gretchen L. Wylegala

### Northern District of Ohio

Michele Blair  
Christa D. Brunst

Julie Butcher  
Kira A. Crawford  
William J. Edwards  
Dottie Finnegan  
Vikki G. Friday  
Jessica Frye  
Gale Ann Giera  
Patricia A. Gober  
Thomas J. Gruscinski  
Paula Hansinger  
Tracy Hardin  
Joanne M. Harrison  
Linda C. Hudson  
Marcia W. Johnson  
Nora Jones  
Patricia Joyce  
Robert W. Kern  
Mary Ellen Kilbane  
Debbie Kusber  
Renee Mackey  
Nora Mauk  
Steven J. Pafilas  
Dan Aaron Polster  
Alan Preston  
Marlon A. Primes  
Alex A. Rokakis  
Deborah Kovac Rump  
John D. Sammon  
Onelia Santos  
David A. Sierleja  
Judy Smurthwaite  
Joanne Sommers  
Stephen G. Sozio  
Emily M. Sweeney  
Phillip J. Tripi  
James R. Wooley

### Middle District of Pennsylvania

William A. Behe  
Anne K. Fiorenza  
Robert R. Long, Jr.  
Jack Mc Cann  
Dennis C. Pfannenschmidt  
Larry B. Selkowitz  
Gwyneth Williams

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**Western District of Pennsylvania**

Mary Beth Buchanan  
Mary T. Fenlock  
Stephen R. Kaufman

**District of Rhode Island**

Ira Belkin  
Stephanie S. Browne  
Maria Branco  
Michael E. Davitt  
Anthony DiGioia  
Sylvia Dulgarian  
Edwin J. Gale  
Gale E. James  
Gerard B. Sullivan

**District of South Carolina**

Marvin Jennings Caughman  
Sheila P. Cook  
Leslie A. Mullins  
Clarissa W. Whaley

**District of South Dakota**

Eileen Armstrong  
Joanne Bender  
Mary Dearborn  
Nicole Ferguson  
Craig P. Gaumer  
Kim Gullickson  
Misty Heeney  
Julie Heider  
Dennis R. Holmes  
LeAnn L. LaFave  
RnhRrt A. Mandel  
Lois Matson  
Ruth Mehlhaff  
Gregg S. Peterman  
Karen E. Schreier  
Bonnie P. Ulrich  
John J. Ulrich  
Jan Walline

**Western District of Tennessee**

Carroll Andre  
Maureen Arvin  
Tony Arvin  
Tracy Berry

Glenda Castleberry  
Veronica Coleman  
Chris Cotten  
Beth Daniel  
Tim DiScenza  
Vivian Donelson  
Kim Doyle  
Joe Dycus  
Peggy Earhart  
Lisa Eichten  
Wesley Ann Flaherty

John Fowlkes  
Betty Gallagher  
Roslyn Gary  
Fred Godwin  
Harriett Halmon  
Linda Harris  
Carolyn Hearvey  
Charlotte Hilliard  
Cora Hulon  
Catherine Johnson  
Serena Johnson  
Cam Jones  
Judy Masters  
Betty Mulholland  
Joan Murphy  
Dan Newsom  
Paul O'Brien  
Tommy Parker  
Brian Quarles  
Ella Seaborn  
Bill Siler  
Sandra Stepleton-McQuain  
Ginger Stanton  
Debbie Sykes  
Joanna Tice  
Gary Vanasek  
Paula Wallace  
Mikii Williams

**Eastern District of Texas**

Madeline G. Badon  
Wilma Ruth Blackshear  
Sandra M. Bridges  
Judith Ann Carter  
Janet Dunning  
Daryl G. Fields

Princess A. Flanagan  
Mary Anne Glossup  
Joseph D. Henderson  
Loretta Dean Lee  
Lenita M. Persohn

**Southern District of Texas**

Shirley Carr  
Brian T. Moffatt  
Carrie Patterson  
Guy L. Womack

**Western District of Texas**

William Baumann  
Valerie A. Benner  
James H. DeAtley  
Bert Eudy  
Lori Fairbank  
Mike Hardy  
Amber Harris  
Margaret Leachmen  
Fran LeBlanc  
Virginia K. Lee  
Richardo Mesa  
Joan Marshall  
Mike McCrum  
Tom McHugh  
John E. Murphy  
David Nichols  
Susan O'Neal  
Phil Police  
Deborah Rusch  
Wayne Speck

**Western District of Virginia**

Jo T. English  
Deborah J. Lawless

**Executive Office for  
United States Attorneys**

Barbara Buchanan  
Robert D. Kearsley  
Gary Wagoner  
Sheila J. Washington





## EOUSA Deputy Director Receives JMD Cooperation Award

EOUSA's Deputy Director for Operations, Michael Bailie, received the JMD Cooperation Award at the Justice Management Division's (JMD) Fourteenth Annual Awards Ceremony on May 16, 1996. He was awarded for service he provided to JMD and the Department by representing all the litigating organizations, and others, in selecting the winner of the Justice Consolidated Office Network (JCON) \$500 million contract which was awarded to provide new office automation services to Departmental components over the next five years. We expect to install JCON in the United States Attorneys' offices in FY 97/98. He made sure the Department hired the contractor that balanced technical innovation, economy, and solid past performance. He also spent hours reviewing detailed technical write-ups; assessing the possible impacts of proposed approaches on Justice organizations; and acting as a spokesperson for thousands of attorneys, paralegals, managers, and secretaries who need improved technology to operate more efficiently in downsized government. ♦

## Crime Victim Fund Award

On April 30, 1996, Attorney General Reno presented 17 federal and state employees with the Crime Victim Fund Award for extraordinary efforts to ensure that federal criminals pay their debts to the federal government's Crime Victims Fund. The Fund supports programs for crime victims with fines, penalty assessments, and proceeds on forfeited bail bonds collected from federal criminal offenders—but not taxpayer dollars. The Attorney General said, "The individuals we honor today inspire us to continue aggressive prosecution of offenders and collection of fines to help victims." In 1995, the 94 United States Attorneys' offices and the Administrative Office of United States Courts collected nearly \$234 million. The following teams, offices, and units were honored:

- Litigation Team in *United States v. Caremark, Inc.*
- Financial Litigation Unit, United States Attorney's office for the Northern District of Georgia
- Bureau of Prison's Inmate Financial Responsibility Program Automation Team

- Financial Litigation Unit, United States Attorney's office for the Northern District of Iowa and the Iowa Department of Corrections
- Paul M. Newby, Assistant United States Attorney and Chief, Financial Litigation Unit, United States Attorney's office for the Eastern District of North Carolina ♦

## Significant Issues/Events

### United States Attorneys' National Conference

The United States Attorneys' National Conference was held on May 28 through 30, 1996, in Baltimore, Maryland. The hosts were the United States Attorney's office for the District of Maryland and EOUSA. The theme was domestic terrorism and crisis response. Speakers included Attorney General Janet Reno; Deputy Attorney General Jamie Gorelick; Principal Deputy Attorney General Merrick B. Garland; AGAC Chair Janet Napolitano; EOUSA Director Carol DiBattiste; United States Attorney Sherry Matteucci, Chair, Domestic Safety Subcommittee; FBI National Security Division Section Chief Robert M. Blitzer; Criminal Division Terrorism and Violent Crime Section Chief James Reynolds; Criminal Division Senior Special Assistant to the Assistant Attorney General Bruce Swartz; invited speaker and author, Dr. Stephen Covey; and others. Some of the topics included initiatives of the Attorney General's Advisory Committee, preventing/investigating terrorist acts, DOJ's Crisis Management Response System, responding to domestic terrorism and other law enforcement crises—the role of prosecutors and the FBI's perspective in responding to domestic terrorism and other crises, juvenile violence, and ethics. ♦

### ADPA Law Enforcement and Corrections Technology Conference

On April 9 - 11, 1996, the American Defense Preparedness Association and the National Law Enforcement and Corrections Technology Center, in

cooperation with the National Institute of Justice, hosted the Third International Conference on Law Enforcement Technology in Los Angeles, California. The conference gave members of industry, government, military, and academia an opportunity to exchange ideas on issues such as concealed weapons detection, electronic crime apprehension, crime scene technologies, less-than-lethal systems technology, and video surveillance. It proved to be an excellent forum on some of the most effective existing as well as emerging technologies. In the April 9, 1996, National Institute of Justice's issue of *Technology Beat*, Conference Chairman Alan Bersin, United States Attorney for the Southern District of California, Special Representative for the Southwest Border, and Chair of the Border Research and Technology Center, stated, "I have learned how essential technology—properly packaged and applied—can be in solving and deterring crimes. I have witnessed firsthand how technological innovation can assist our Nation's law enforcement officers by making their jobs both more safe and more efficient." Deputy Attorney General Jamie S. Gorelick; Director Jeremy Travis, National Institute of Justice; and other officials addressed conference participants. ♦

## Upcoming LECC/Victim-Witness National Conference

On May 17, 1996, in a memo from EOUSA Director Carol DiBattiste to United States Attorneys, the first LECC/Victim-Witness Conference sponsored by EOUSA in several years was announced. It will be held on September 23 - 27, 1996, at the Adams Mark Hotel in St. Louis, Missouri. Clarification of the role of LECC and V-W Coordinators and the Violent Crime Control and Law Enforcement Act of 1994 and pursuant Attorney General's Guidelines will be agenda items. For further information, please contact Assistant Director Kimberly Lesnak, EOUSA's LECC/Victim-Witness office, (202)616-6792 or Email AEX02(KLESNAK). ♦

## AGAC Update

The Attorney General's Advisory Committee met April 15 - 16, 1996. The next meeting of the Committee will be held June 26 - 27, 1996, in Washington, D.C. ♦

## Updated AGAC Subcommittee List

On April 25, 1996, in a memo from District of Arizona United States Attorney Janet Napolitano, Chair of the Attorney General's Advisory Committee, and EOUSA Director Carol DiBattiste, an updated AGAC Subcommittee listing was forwarded to United States Attorneys. If you would like a copy of the list, please contact the *United States Attorneys' Bulletin* staff, (202)514-3572. ♦

## Anti-Deficiency Act Bluesheet

On April 19, 1996, EOUSA Director Carol DiBattiste forwarded a memo to United States Attorneys and Assistant United States Attorneys enclosing *United States Attorneys' Manual* Bluesheet 3-3.101, signed by Deputy Attorney General Jamie Gorelick on April 9, 1996. It sets forth a revised policy for formalizing the prior approval and consultation necessary when making expenditures and obligations under the Anti-Deficiency Act. If you would like a copy of the Bluesheet, please contact Regina Barrett, EOUSA's AGAC Liaison Staff, (202)514-4633 or Email AEX03(RBARRETT). ♦

## Supreme Court Ruling in *United States v. Armstrong*

On May 13, 1996, EOUSA Director Carol DiBattiste forwarded a memo via Email to United States Attorneys, First Assistant United States Attorneys, and Criminal Chiefs, announcing the Supreme Court decision in *United States v. Armstrong* that a defendant who alleges that he was singled out for prosecution based on his race must make a threshold showing that the government declined to prosecute similarly situated suspects of other races. The Court further held that Fed. R. Crim. P. 16, which authorizes discovery by the defendant of documents "material to the preparation of the . . . defense," authorizes discovery only of material relevant to the preparation of a defense against the government's case-in-chief, and not to defenses such as selective prosecution. Chief Justice Rehnquist wrote the decision. Justices Souter and Ginsburg joined the Court's opinion but wrote separately, stating

their view that the Court's Rule 16 ruling was limited to the facts of this case. Justice Breyer wrote an opinion concurring in the judgment based on similar concerns. Justice Stevens dissented. For assistance on issues the same or similar to those raised in the Armstrong case, contact Kathleen Felton, Criminal Division, Appellate Section, (202)514-2155. ♦

### **Provisions Under Title VII, 42 U.S.C. 2000e et seq. Cover HHS's Public Health Service's Commissioned Officers**

In an April 29, 1996, memo from Federal Programs Branch Assistant Director Anne Gulyassy to United States Attorneys, First Assistant United States Attorneys, and Civil Chiefs, Ms. Gulyassy announced that the Solicitor General has determined that commissioned officers of the Public Health Service (PHS) of the Department of Health and Human Services (HHS) are covered by the provisions under Title VII, 42 U.S.C. 2000e et seq. In previous cases, HHS maintained that PHS offices were exempt under the "military exception" which excludes uniformed members of the armed forces from coverage under Title VII. The Solicitor General reached this decision in the context of denying approval for an interlocutory appeal in *Carlson v. Shalala*, No. AW-94-1928 (D. Md. 1995). Two circuits reached contrary results on this issue: *Salazar v. Heckler*, 787 F.2d 527 (10th Cir. 1986) (extending military exception to PHS) and *Milbert v. Koop*, 830 F.2d (D.C. Cir. 1987) (PHS covered under Section 504 of the Rehabilitation Act). The Solicitor General limited his decision to normal operations of the PHS, and is not intended to preclude the argument that the PHS would be covered by the military exception if the President were to mobilize the PHS as part of the armed forces. Reminder: commissioned officers of the PHS may sue under Title VII. Please direct questions to Anne Gulyassy, (202)514-3527, or Marleigh Dover, Appellate Staff, Civil Division, (202)514-3511. ♦

### **Policy Revision—Consent to Try Civil Matters Before Magistrate Judges**

On April 8, 1996, EOUSA Director Carol DiBattiste forwarded a memo to United States Attorneys about the Department's policy concerning consent to try civil matters before magistrate judges, as memorialized by 28 C.F.R. § 52.01. Upon inquiry by the Judicial Conference Committee on the Administration of the Magistrate Judges System, representatives from DOJ's litigating components, the Associate Attorney General's Office, and the Office of Policy Development reviewed DOJ's policy and determined that minor revisions were needed. A final rule has been promulgated by the Attorney General. The policy adopted in 1980 that favored the use of magistrate judges when possible was retained in the revised rule, along with that of allowing DOJ litigators to exercise discretion in whether to consent to the use of a magistrate judge. Attorneys for the United States no longer must consult with the relevant Assistant Attorney General before consenting to trial before a magistrate judge but attorneys must obtain their supervisor's concurrence before consenting. If you would like a copy of the revised rule or Assistant Attorney General Acheson's memo to the Attorney General, recommending revision and clarification of the final rule, please contact Assistant United States Attorney Jeanette Plante, EOUSA's Programs office, (202)616-6444, or Email AEX02(JPLANTE). ♦

### **Health and Medical Needs of Defendants May be Factor in Decision to Prosecute**

On March 22, 1996, EOUSA Director Carol DiBattiste and Chair of the AGAC, Janet Napolitano, forwarded a memo to United States Attorneys about the United States Marshals Service's concern regarding increasing costs and logistical problems in housing, transporting, and producing pretrial prisoners with serious medical conditions. Pretrial prisoners have topped 23,000, the highest level in history and a 20 percent increase since last year. As one of the factors in making a decision to prosecute, consideration may be given to health and specialized medical needs and costs



of medical care required for defendants. It may be appropriate to delay issuing warrants for individuals who are hospitalized with serious medical conditions until they are discharged, or to not press for a federal detainer in the case of a prisoner who has major medical needs and is serving a state sentence. This balancing of prosecutorial and cost considerations is most likely to occur in making decisions to prosecute immigration cases. Questions or requirements related to medical care for pretrial prisoners should be directed to Pat Macherey, Chief, Prisoner Medical Services, (703)416-8928. ❖

## Protocol for Processing Invitations for the Attorney General's Participation in Events

On April 8, 1996, EOUSA Director Carol DiBattiste forwarded to United States Attorneys the new protocol established between EOUSA, the Office of the Attorney General (OAG), the Office of the Deputy Attorney General, the Office of Public Affairs, and the Office of Public Liaison and Intergovernmental Affairs, to enable United States Attorneys to submit to the OAG public requests inviting the Attorney General to participate in events. If you would like a copy of the memo including the protocol and an Attorney General Scheduling Request form, please contact Assistant United States Attorney Janice Innis-Thompson, EOUSA's Office of Counsel to the Director, (202)514-6267. ❖

## Child Support Prosecutions Increase

One of the most serious problems for many American families is the failure of non-custodial parents to pay court-ordered child support. Nearly two-thirds of families owed child support receive none or only a small amount. Attorney General Reno has given this issue a high priority and has encouraged United States Attorneys to increase their enforcement activities under the federal Child Support Recovery Act of 1992 (18 U.S.C. 228).

The Child Support Recovery Act creates a first offense misdemeanor for willfully failing to pay a past-due child support obligation for a child living in another state. To be in violation of this statute, the obligation must be either greater than \$5,000 or must have remained unpaid for more

than a year. Federal cases are brought by United States Attorneys' offices with support from the Child Exploitation and Obscenity Section (CEOS) of the Criminal Division. Potential cases are referred by state IV-D agencies, created by title IV-D of the Social Security Act, the Child Support Enforcement Program.

Many United States Attorneys are vigorously enforcing the Child Support Recovery Act, successfully prosecuting cases involving more than \$1.2 million in court-ordered restitution. More than 80 indictments or informations were filed in 1995, up from only two in 1993, the first year in which the Act was effective.

Karen E. Schreier, United States Attorney for South Dakota and Chair of the Juvenile Justice Subcommittee of the Attorney General's Advisory Committee (AGAC), has had significant success enforcing the Act. Schreier has brought more than 30 Child Support Recovery Act cases, even though South Dakota has a state child support felony statute. Her office works closely with the local child support agency to determine which cases are most appropriate for prosecution. Schreier met with state child support officials shortly after her appointment, and together, they developed a plan to prosecute some child support cases federally.

Schreier accepts only six referrals at a time from the state IV-D agency, encouraging the agency to send "the worst of the worst offenders." The state authorities view the federal statute as an additional tool to use in enforcing child support collection. "We can't prosecute every case federally, but we can deter this crime by prosecuting cases in every area of the state," Schreier notes.

Other United States Attorneys with multiple prosecutions under the Child Support Recovery Act include Helen E. Fahey of the Eastern District of Virginia, J. Rene' Josey of South Carolina, and Charles R. Wilson of the Middle District of Florida. Mary Jo White, United States Attorney for the Southern District of New York, brought the largest prosecution under the Act when investment advisor Jeffrey Nichols was charged last year with repeatedly moving to various states to avoid more than \$500,000 in support for his three children.

Several steps have been taken to increase the ability of United States Attorneys to bring prosecutions. The Department has provided training for prosecutors, FBI agents, and others on innovative ways to investigate and prosecute these cases. Each United States Attorney has named a child support enforcement coordinator to work

with state child support agencies. The FBI has made a commitment to work on cases where local child support agencies are unable or unwilling to pursue investigations.

Investigations of these cases, by definition, involve more than one state. In the past, these cases have been brought in the state of the child. A pilot project involving 50 cases is currently underway to assess whether it is preferable to investigate and bring the case in the home state of the child or of the non-custodial parent.

In addition to the state investigative resources and the FBI, the Department of Health and Human Services' (HHS) Office of the Inspector General (OIG) pledged its investigative support in districts which have HHS offices. The Justice Department deputized them to work on child support cases.

Justice Department representatives, including personnel from EOUSA and the FBI, have begun to meet regularly with HHS staff to facilitate the exchange of information needed to bring successful cases. In many districts, Assistant United States Attorneys report that referrals are improving due to increased communication and informal training of state IV-D agency employees by United States Attorneys and the FBI.

The constitutionality of the Child Support Recovery Act has been challenged in several districts on *Lopez* grounds. Defendants claim that the Act exceeds Congress' power to legislate under the Commerce Clause and that it violates the Tenth Amendment. Six district courts have upheld the Act in published decisions but three district courts have struck it down (including one that issued two decisions). The Department is appealing the adverse decisions.

In a letter to Justice Department employees in the May issue of "Justice for All," Attorney General Reno reiterated the high priority she gives to child support cases and other department efforts to increase child support collections. Recently, she asked Debra Cohn, Special Counsel to the Deputy Attorney General, to coordinate DOJ child support efforts, including prosecutions, full faith and credit, and employee programs.

United States Attorneys with questions about the enforcement of the Child Support Recovery Act should contact Trial Attorneys Craig Wolf or Jan Kockritz, Criminal Division, Child Exploitation and Obscenity Section, (202)514-5780. United States Attorney Karen Schreier is available for guidance at (605)330-4400.

## State Environmental Audit Privilege and Immunity Legislation

On April 19, 1996, EOUSA Director Carol DiBattiste forwarded to United States Attorneys an Environment and Natural Resources Division request for assistance in reference to the possible adoption of Environmental Audit laws by various states. For further information, please contact District of Eastern Missouri United States Attorney Edward L. Dowd, Jr., Chair, AGAC Environmental Crimes Subcommittee, or Louis DeFalaise, EOUSA's Counsel to the Director, (202)616-2128. ♦

## National Strategy to Coordinate Gang Investigations

On April 19, 1996, EOUSA Director Carol DiBattiste forwarded to United States Attorneys a copy of a 1995 report to the President and Congress entitled, "National Strategy to Coordinate Gang Investigations," which advocates a regional and national approach to best address gang problems. The report is divided into four parts: Identifying the Gang Problem, The Coordination Strategy, Results of the Coordination Strategy, and Prototype: Federal-State-Local Plan for Targeting Gang Violence. Successful efforts of USAOs are highlighted in the results section. If you would like a copy of the report, please contact the *United States Attorneys' Bulletin* staff, (202)514-3572. ♦

## Southern District of Ohio Collections Top \$57 Million

On April 22, 1996, United States Attorney Edmund A. Sargus, Jr., announced that the United States Attorney's office for the Southern District of Ohio collected a record \$57,891,713 from criminal and civil defendants in fiscal year 1995, including fines, restitution, special assessments, court costs, loan recoveries, and False Claim Act recoveries. The Civil Division recovered nearly ten times the cost of operating the division last year. The district's collection figures for civil and criminal collections were fourth highest of the 94 districts nationwide. ♦

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## Multi-Agency Anti-Violent Crime Strike Team in Eastern District of California

**T**he United States Attorney's office for the Eastern District of California, INS, the United States Marshals Service, and local law enforcement from the Eastern District joined forces to form a Multi-Agency Anti-Violent Crime Strike Team to assist in identifying convicted felons who slip back into criminal activity. The team assisted in more than 70 searches and conducting parole and probation searches, and the team apprehended 104 individuals within a one-month period. ♦

## Southern District of Mississippi USAO Active in "Operation Clean House"

**A**s part of the "Weed and Seed" initiative, the United States Attorney's office for the Southern District of Mississippi, the Jackson Police Department, and the Jackson Metro Housing Partnerships are working together on "Operation Clean House," a project that promotes safer neighborhoods by taking landlords' property that is used for selling drugs. Twenty-seven properties have been identified for forfeiture to the government. Properties are given to local non-profit housing organizations to be demolished or renovated. ♦

## Project Safe Home Task Force in Eastern District of Louisiana

**T**he United States Attorney's office for the Eastern District of Louisiana, DEA, the New Orleans Police Department, and ATF have joined forces in a Project Safe Home Task Force that targets career criminals in high-crime neighborhoods. Much of the task force's success is due to the 581-GUNS hotline. To let the public know about the hotline, United States Attorney Eddie Jordan, Jr. advertised on a local radio station and cable station, discussing the hotline and the task force's mission to rid the city of guns, drugs, and violence. ♦

## Northern District of Georgia Adds Attorneys for "Safe Streets"

**O**n March 21, 1996, four additional attorneys began work as part of "Operation Safe Streets," an intensified program designed primarily to target convicted felons, prior to the Olympics, who have violent and drug-related criminal histories and are carrying guns. The United States Attorney's office (USAO) is now in a better position to handle more state and local requests for violent crimes prosecutions and to remove armed criminals from metro Atlanta's streets. "Safe Streets" enhances the USAO's ongoing Violent Offender Rapid Reaction Team which coordinates federal resources, including the investigative expertise of the Bureau of Alcohol, Tobacco and Firearms and the Federal Bureau of Investigation to fight violent crime. ♦

## D.C. "Operation Ceasefire" Getting Results

**B**uilding on the success of the "Kansas City Gun Experiment," the District of Columbia United States Attorney's office launched "Operation Ceasefire" to reduce violence in the community and destroy the glamorous and powerful mystique of firearms that fascinates so many of our young people. The Kansas City initiative was tied to the city's Weed and Seed program, and reduced gun crime there by almost 50 percent during a six-month period. The D.C. initiative focuses on seizing illegal weapons, increasing the certainty of punishment of individuals convicted of illegal possession of firearms, and educating youth about the destructive potential of firearms. In calendar year 1995, the District of Columbia realized a 12.5 percent decrease in gun-related homicides and a 7.12 percent decrease in assaults with dangerous weapons involving guns compared to 1994. Much of the citywide decrease can be attributed to significant decreases in the figures in three of the six police districts where the program's gun recovery units operate. For more information on Operation Ceasefire, contact Monty Wilkinson, Special Counsel to United States Attorney Eric Holder, (202)307-2340. ♦



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## New Regulations for Email Recordkeeping

**O**n March 22, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys concerning more detailed guidance regarding whether an Email is a federal "record" and must be preserved in accordance with National Archives and Records Administration (NARA) at 36 C.F.R., Parts 1220 through 1234, regulations that became effective September 27, 1995. Enclosed in Ms. DiBattiste's memo is a March 13, 1996, Justice Management Division memo to all component heads providing additional guidance on what constitutes a "federal record," NARA regulations, a discussion of a federal record, and the process of saving Emails were covered in a memo from Ms. DiBattiste to United States Attorneys on December 20, 1995. Answers to questions about Email retention following the December 20, 1995, memorandum are addressed in the March 22, 1996, memo. If you would like a copy of these memos or further information, please contact Kevin J. Keefe, EOUSA Legal Counsel's office, Email AEX03(KKEEFE), Fax (202)514-1104, or phone (202)514-4024. ❖

## V-W Responsibilities of Federal Prosecutors

**I**n an April 12, 1996, memo from EOUSA Director Carol DiBattiste, a summary of the responsibilities of United States Attorneys and Assistant United States Attorneys that were identified in the 1995-revised *Attorney General's Guidelines for Victim and Witness Assistance*, was forwarded to United States Attorneys and Assistants. Each office should have procedures in place which implement these *Guidelines*. Questions should be directed to Assistant Director Kimberly Lesnak, LECC/Victim-Witness Staff, (202)616-6792 or AEX02(KLESNAK). ❖

## Educating Minority Communities on Law Enforcement and Criminal Justice System

**O**n March 22, 1996, EOUSA Director Carol DiBattiste forwarded to United States Attorneys and First Assistant United States Attorneys information on programs that focus on increasing awareness of the criminal justice system among minority communities, in response to a request from several districts that EOUSA provide additional information to assist districts in enhancing or establishing these programs in their districts. District responses to an EOUSA January 31, 1996, request for information from the districts on existing programs that focus on increasing awareness of the criminal justice system among minority communities were included in the March 22 memo. If you would like a copy of either memorandum, please call Ducie Wilson, EOUSA's Office of Counsel to the Director, (202)514-6271. ❖

## Celebration of Law Day in the Middle District of Louisiana

**U**nited States Attorney L. J. Hymel and three Assistant United States Attorneys from the Middle District of Louisiana participated in the Baton Rouge Bar Association's Annual Law Day activities by conducting sessions with area high school students on criminal justice issues at the State Courthouse. Members of the District also participated in a naturalization ceremony for 250 persons who became United States citizens. ❖

## National Crime Victims' Rights Week

**D**uring the week of April 21 - 27, 1996, many United States Attorneys' offices renewed their energy and rededicated their offices to the fight for victims' rights and services with activities to celebrate National Crime Victims' Rights Week. The theme was "Victim Justice: A New Day Dawns." Some of the activities included:

• Eastern District of Arkansas and the Prosecuting Attorney's Office in Pine Bluff, Arkansas, and the Western District of Arkansas sponsored "Child Identification Programs." Identification kits included dental imprints and



*LECC/NW Coordinator Donna M. Copeland of the Western District of Arkansas and a local elementary school PTA member take fingerprints during Child Identification Program.*

fingerprint records that can be entered into the National Criminal Information Center (NCIC) in the event that a child is missing. The dental imprints and fingerprints are given to the parents, not kept by law enforcement. The fingerprints are taken using a new "inkless" substance that is quick and clean, and dental imprints are made using styrofoam grocers' trays. The Eastern District of Arkansas also sponsored opening ceremonies for the National Crime Victims' Rights Week in Little Rock, and held a candlelight vigil at a memorial garden.

• District of Alaska (Anchorage) held a "Tree Ceremony" which included speakers, proclamations, and concluded with victims tying colored ribbons, representing the crime of which they were a victim, to a tree. Victims also tied ribbons on their cars as reminders to the community of the number of victims in Anchorage. A local entertainer who was a victim of crime wrote a song and sang it

at the ceremony. The Police Department sponsored a personal crime prevention class, and the Alaska Police Chaplain's Ministries presented a seminar entitled, "From Victim to Survivor." The week concluded with a homicide memorial service at the Anchorage library.

• Northern District of California held their annual Bill Key Memorial Victim/Witness Assistance Award Ceremony, where United States Attorney Michael J. Yamaguchi presented certificates to employees, including three Assistant United States Attorneys, for valuable and exemplary service in assisting victims and witnesses. Victim Witness Coordinator Debbie Deem participated in the annual "Unsung Heroes in Victim Services" Ceremony, part of the Victim Support Network, where members of the USAO and others were honored for their work with victims.

• District of Columbia held its annual "Justice for Victims of Crime" awards ceremony. United States Attorney Eric Holder presented awards to private citizens, organizations, businesses, government employees, and crime victims who provided exceptional service to victims of crime. The District released its new *Handbook for Families and Friends of Homicide Victims*, and conducted events at an elementary school, including presentations by Assistant United States Attorneys and victim advocates, and planning and rehearsing a mock trial.

• Southern District of Florida conducted training for Assistant United States Attorneys on handling permanent injunction hearings for domestic violence victims. An exhibit entitled, "The Silent Witness," consisting of life-size figures depicting actual victims of domestic violence was presented.

• District of Kansas, in conjunction with the City of Overland Park, conducted a victims' rights march and rally in Overland Park, including speakers United States Attorney Jackie N. Williams, District of Kansas; Johnson County District Attorney Paul Morrison; and victim survivor Jeff Gragg, whose mother was killed by gang cross-fire. The District participated in the Parents of Murdered Children's Memorial Candlelight vigil, an organization that placed a beautiful memorial in a downtown park listing names of victims killed by senseless acts.

- District of New Jersey hosted an awards ceremony honoring 47 law enforcement officers from federal and local agencies, Assistant United States Attorneys, and a Paralegal Specialist for their extraordinary efforts in the successful prosecution of criminal cases and their outstanding victim/witness assistance.

- Northern District of New York participated in vigils at the State Capitol at Albany and in Syracuse where five individuals were honored by United States Attorney Thomas Maroney for their exceptional contributions to crime victims' services. A dedication ceremony was held for the New York State Crime Victims' Memorial at the State Capitol.

- Southern District of Ohio held a kickoff ceremony, including an annual commemoration at the State House Atrium and a march to St. Joseph's Cathedral in remembrance of crime victims. The keynote speaker was Mark Arenas, Los Angeles County Prosecutor's Office and the lead victim advocate for the O.J. Simpson trial.



*Victim Assistance Director Jannette Adkins, Greene County Prosecutor's Office; Mark Arenas, Los Angeles County Prosecutor's Office and lead victim advocate for O.J. Simpson trial; and Victim-Witness Coordinator Barbara Vanarsdall at Crime Victims' Commemoration.*

- Western District of Texas acknowledged Assistants, investigators, and probation officers who gave victims exemplary treatment during the past year in an awards ceremony where recipients were presented plaques by United States Attorney Bill Blagg. ❖

## Northern District of Alabama Hosts Juvenile Issues Conference

On May 7, 1996, the United States Attorney's office for the Northern District of Alabama, the Alabama Youth Home, and members of federal, state, and local law enforcement agencies hosted the second annual Juvenile Issues Conference in Birmingham which focussed on initiatives that are working in the community to save young lives and build their futures. ❖

## Southern District of Texas Publishes 1995 Annual Report

In March 1996, United States Attorney Gaynelle Griffin Jones forwarded the Southern District of Texas' Annual Report outlining their efforts in enforcing federal laws and representing the United States in civil litigation, and the investigative and enforcement efforts of law enforcement agencies throughout the district. The report, dedicated to the victims of the Oklahoma City tragedy, is the first United States Attorney's office annual report to be published on the Internet. It is available at <http://www.usdoj.gov/usao>. ❖

## Companion Air Fares

An airline's offer of a free or discounted companion ticket may not be used by employees for personal use when the ticket is obtained incident to official travel. Under 41 C.F.R. §§ 101-25.103-2(a) and 301-1.103(b)(1995), promotional materials received by an employee incident to official travel are due to the government and may not be retained by the employee. This is true even if the government cannot take advantage of the companion fare because the airlines require that the "companion" travel on the same flight as the employee. If you have questions, please contact Kirby Heller, EOUSA's Legal Counsel Staff, (202)514-4024. ❖



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## Northern District of Iowa USAO Relocates

**E**ffective June 1, 1996, the address of the Northern District of Iowa is:

United States Attorney's Office  
Northern District of Iowa  
Hach Building, Suite 400  
401 1st Street, S.E.  
Cedar Rapids, Iowa 52401-1825

Phone numbers and Post Office address did not change but are listed below:

Phones: (319)363-0091 or (319)363-6333

Post Office Box Address:

United States Attorney's Office  
Northern District of Iowa  
P.O. Box 74950  
Cedar Rapids, Iowa 52407-4950 ❖

## EOUSA Staff Update

### New Acting Assistant Director for Security

**O**n May 20, 1996, Tommie Barnes was appointed by EOUSA Director Carol DiBattiste as the new Acting Assistant Director for EOUSA's Security Programs office. David Downs, former Acting Assistant Director of Security Programs, returned to the Office of Legal Education as Deputy Assistant Director. ❖

### Women's Executive Leadership Program

**E**OUSA Paralegal Gwyn H. LeDoux was accepted for the 1996-1997 Women's Executive Leadership Program, which is administered by the Graduate School of the United States Department of Agriculture. ❖

## Telecommunications and Technology Development Update

### Video Teleconference Installation

**O**n April 19, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys, forwarding the video teleconferencing (VTC) systems schedule for installing an average of 15 systems a month in United States Attorneys' offices beginning in May 1996. If you are interested in a copy of the schedule, please contact Assistant Director Harvey Press, Telecommunications and Technology Development staff, (202)616-6439. ❖

## Security Update

### Security Measures for USAOs

**O**n April 5, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys, First Assistant United States Attorneys, District Office Security Managers, and Administrative Officers announcing that EOUSA received \$10 million for the deployment of security guards, magnetometers, and mail and package X-ray screening equipment to those United States Attorneys' offices currently lacking any such security measures. The EOUSA Security Programs staff, in conjunction with the AGAC Domestic Safety Subcommittee, developed criteria for deployment of guards and magnetometers and is committed to providing the highest level of security to USAOs to address security deficiencies. An attachment to the memo listed USAOs that were selected for deployment of security measures, and future requests will be considered and approved as additional funding allows. In a April 30, 1996, memo, Carol DiBattiste forwarded information in response to USAO inquiries concerning GSA guard services. For further information or for a copy of either memo, please contact EOUSA Security Programs Staff Acting Assistant Director Tommie Barnes, (202)616-6878. ❖

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## **Equal Employment Opportunity Office Update**

### **Accomplishments Reports and Affirmative Action Plan Updates**

**O**n April 3, 1996, EOUSA Director Carol DiBattiste distributed to United States Attorneys and Administrative Officers, copies of the Disabled Veterans Affirmative Action Plan Update for FY 96 and the Accomplishments Report for FY 95. Also distributed were copies of the Affirmative Action Program Plan Update for Persons with Disabilities for FY 96 and the Accomplishments Report for FY 95. The plan includes ways to provide employment opportunities for disabled veterans, especially those who are 30 percent or more disabled, and persons with disabilities, in particular those who are severely disabled. The accomplishments reports address the achievements made by EOUSA and the Offices of United States Attorneys towards providing and improving employment opportunities for disabled veterans and persons with disabilities in FY 95. Questions should be directed to EEO Specialist Daryl Thomas, EOUSA's EEO Staff, (202)514-3982, AEX03(DTHOMAS), or fax (202)305-1431. ❖

## **FOIA/Privacy Act Update**

### **A Case for Housekeeping and File Purging**

**E**OUSA's FOIA staff estimates that taxpayers spend \$1,500 each time FOIA responds to a request and searches for documents, copies, analyzes, and releases materials to a person. Most of that expense is for labor: handling, copying, and mailing materials.

Many documents need not be maintained in closed criminal or civil case files. While it is important in each case to be able to reconstruct and explain what was done and why, once a case is closed, it is not necessary to keep copies of reported federal cases, drafts of pleadings, FedEx bills, or other unimportant notes. Under the FOIA/PA, at the time a request is received, the FOIA representative

copies and sends the EOUSA FOIA/PA staff each document in a file for review.

Hats off to United States Attorney Don Nickerson and Administrative Officer Phil Pitzen, Southern District of Iowa, who the FOIA/PA staff reports were concerned about the inefficiencies of bulging drawers and sagging shelves of closed files in their office and initiated a clean-up, throw-out program for the last two weeks in June! This is a great idea for all District offices. ❖

## **Office Automation Update**

### **Restrictions on Use of Information America through Westlaw**

**O**n May 7, 1996, EOUSA's Deputy Director of Operations, Mike Bailie, sent a memo via Email to United States Attorneys, First Assistant United States Attorneys, and Administrative Officers, requesting that use of Information America (IA) be restricted to United States Attorneys' offices' Financial Litigation Units and Libraries due to the high cost of IA on-line services. West Publishing Company, the providers of Westlaw, recently purchased IA. In January, West began providing access to IA to all Westlaw accounts and passwords, including all Westlaw passwords assigned to USAOs. As a result of the increased use, the cost for connect time for IA services has more than doubled in the past two months. Office Automation is working with West Publishing to reinstitute access restrictions that were previously in place in each office and, until that is accomplished, online users of IA in each USAO should be restricted to Financial Litigation Units and Libraries. For further information, please contact Gerry Connolly, Office Automation staff, (202)616-6969. ❖

## **Bulletin Board System for Press Releases**

**O**n April 16, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys, First Assistant United States Attorneys, and Administrative Officers, announcing the establishment of a new Bulletin

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Board System (BBS) for posting United States Attorney press releases for availability to United States Attorneys, the Office of Public Affairs, the Justice Management Division (JMD) Internet staff, and the news media. Attorney General Janet Reno announced the availability of this BBS on April 17, 1996. BBS provides one location where press releases and other news items from United States Attorneys' offices are made available to the news media. Access is by dial-in via modem. EOUSA has arranged with JMD to download press releases from this BBS and post them on the Internet. Please post press releases on this BBS as soon as possible. The Bulletin Board access number is (202)305-4957. For further information, please contact Gerry Connolly, Office Automation staff, (202)616-6969. ♦

## Access to the Internet

Internet IDs are available to United States Attorneys' Offices through the Justice Management Division. Please contact your district System Manager for further information. ♦

## Project Phoenix

On March 29 and April 5, 1996, in memos from EOUSA Director Carol DiBattiste to United States Attorneys, First Assistant United States Attorneys, and Administrative Officers, the following information was discussed.

Following considerable negotiation, technology review, and pilot testing in EOUSA; EOUSA/Evaluation and Review Staff in Ft. Myers, Florida; the Southern District of West Virginia; and the Northern District of West Virginia, plans are well underway to install EAGLE network system upgrades in United States Attorneys' offices, in a project called Phoenix, that is providing users with better access to their systems and many new features. Approximately 40 servers are being installed per month, including servers in all staffed offices and representing about ten districts per

month. Features include new off-the-shelf servers, a new Windows-based Email/calendar/scheduler system, a new method of dialing into the network from remote locations (including hotels), and printer upgrades and access changes that will allow more files to be printed directly over the network. The installation schedule provides for upgrade of systems experiencing hardware problems, followed by those with the oldest equipment. These installations are scheduled for completion by the second quarter of calendar year 1997.

## Laptops

The Phoenix upgrade will require a minimum of Model 486 laptops to dial into the new system. As part of the Phoenix upgrade, one Model 486 laptop will be provided to each United States Attorney, System Manager, and staffed office. Purchase of additional laptops will be authorized providing funds are available in the district's local budget.

## PC Upgrades

As part of Phoenix, all 130MB disk drives in 486/33 machines will be upgraded to 1.08GB drives.

## WordPerfect

Both WP5.1+ for DOS and 6.1 for Windows are available as part of Phoenix. Districts are encouraged to switch to Windows as soon as possible once Phoenix has been installed. Windows training will be provided to users as part of Phoenix.

## Printers

As part of Phoenix, memory in the HP II and HP III printers will be upgraded from 512K to 2MB to enhance printing capabilities.

For further information, please contact Assistant Director Carol Sloan, Office Automation staff, (202)616-6969. ♦



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## Case Management Update

### Major Initiative to Improve Case Management Systems

On May 2, 1996, EOUSA Director Carol DiBattiste forwarded to United States Attorneys, First Assistant United States Attorneys, Civil Chiefs, Criminal Chiefs, Administrative Officers, and System Managers, a memo forwarding a Continuous Case Management Data Quality Improvement Plan, a program and major initiative that will enhance the success of the Legal Information Online Network System (LIONS) implementation effort but will result in more reliable data that is used for a wide variety of internal management and public information purposes. If you would like a copy of the memo and plan, or further information, please contact Assistant Director Eileen Menton, Case Management staff, Email AEX11(EMENTON) or (202)616-6918. ❖

### Second Quarter FY 96 Asset Forfeiture Reports

On May 1, 1996, EOUSA Assistant Director Eileen Menton, Case Management staff, forwarded a set of summary and detailed reports on the status of forfeiture work to United States Attorneys for Asset-Forfeiture Units, Administrative Officers, and System Managers. Questions should be directed to Sharon Hopson (PROMIS/USACTS-II districts) or Patti Ostrowski (PC-USACTS-1 districts), Case Management staff, (202)616-6919. ❖

### Case Management Initiatives

On March 29, 1996, in a memo from EOUSA Director Carol DiBattiste to United States Attorneys, First

Assistant United States Attorneys, and Administrative Officers, the following information was discussed.

### LIONS: The New Caseload Tracking System

Legal Information Online Network System (LIONS), to be installed in the pilot districts of New Jersey, Eastern Virginia, and Southern West Virginia in the summer, will run in the Windows environment. The software is being upgraded to Version 7, the latest Windows version of ORACLE, as well as to new versions for the forms and reports software. Nationwide implementation of LIONS is scheduled to begin in fiscal year 1997.

### ORACLE for Phoenix

New versions of USA-5, TALON, USASEC (ORACLE Security), and PAYS (Pay Allocations Tracking System) will be installed as part of the server upgrades discussed under "Project Phoenix" in the Office Automation section above.

### Grand Jury Tracking System

The Grand Jury Tracking System (GJTS) developed by EOUSA's Case Management staff and a group of Assistant United States Attorneys and Grand Jury Coordinators, provides an automated method for tracking grand jury work and is designed to assist district Grand Jury Coordinators, Assistant United States Attorneys, and their secretaries assigned Grand Jury investigations. Grand Jury Coordinators from the following districts participated in GJTS's development: Eastern California, Central Illinois, Northern Indiana, Eastern Kentucky, Western Kentucky, Maryland, Western Michigan, Western New York, Northern Ohio, Eastern Texas, Western Washington, Southern West Virginia, and Wyoming. GJTS is in the final stages of testing, and training will be included in the Office of Legal Education's Seminars for Grand Jury Coordinators scheduled this year. Nationwide distribution will occur when Phoenix is available. ❖

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## USA-5 and USA-5A, USAs' Monthly Resource Summary Report

In an April 5, 1996, memo to United States Attorneys, EOUSA Director Carol DiBattiste enclosed the Case Management booklet, *The USA-5 and USA-5A: Overview of the United States Attorneys' Monthly Resource Summary Report*. The memo expressed appreciation for support of the time reporting systems, USA-5 and USA-5A; noted that significant improvements have been made in the quality of data entered into the systems and that EOUSA expects to rely more heavily on information entered in USA-5, USA-5A, and the local Case Management System (PROMIS, USACTS II, TALON, or PC-USACTS) in the future; and requests that information be entered in the system consistently so that EOUSA can promptly respond to questions from Congress, the Attorney General, the Deputy Attorney General, and other government officials, which will impact future resource allocations. If you would like a copy of the booklet, please contact Assistant Director Eileen Menton, EOUSA's Case Management staff, (202)616-6919. ♦

## Office of Legal Education

### PA Continuing Legal Education Accreditation a Major Victory

In a March 29, 1996, memo to United States Attorneys, First Assistant United States Attorneys, and Administrative Officers, EOUSA Director Carol DiBattiste announced that effective March 18, 1996, the Pennsylvania Continuing Legal Education Board approved the Office of Legal Education (OLE) as an accredited provider of continuing legal education (CLE) for its members, following a three-year effort to regain the accreditation that was lost when Pennsylvania's CLE Board decided that its providers must open training to the public—an impossibility under OLE's mission stated in the C.F.R. Pennsylvania was the only State or Commonwealth that did not recognize OLE as an accredited provider. Now Assistants and DOJ Trial Attorneys who are members of the Pennsylvania Bar receive CLE credits for attending OLE-sponsored courses.

Questions should be directed to OLE Director Janet Craig at (202)616-6700 or Fax (202)616-6476. ♦

## OLE Helps Train Russian and Ukrainian Prosecutors

*Tom Majors, Office of Legal Education*

How about an OLE course in Moscow or St. Petersburg, Russia? Or maybe a seminar on the American criminal justice system in Kharkov, Ukraine? OLE is now international. At the invitation of the National District Attorney's Association, OLE representatives were the federal members of a federal and state team of prosecutors that has been conducting training in Russia and the Ukraine since last summer. Prosecutors from Russia and the Ukraine have also visited the United States and observed training being conducted at OLE, and visited the United States Attorney's offices in Baltimore, Maryland, and Alexandria, Virginia.

The training provided an introduction to the organization of the American criminal justice system and its function in a democratic society and included American adult educational techniques and their application to prosecutor training. The training program was developed by the National District Attorneys' Association under a grant from the United States Agency for International Development.

Both Russia and the Ukraine are interested in exploring alternatives to their present system of legal education for prosecutors. Both countries have continued the training programs and organization established under the former Soviet Union which provide for prosecutors to spend a month or more every five years at a central training facility learning new changes in the law. The training is almost exclusively by lecture, typically with the instructor reading an academic paper to the class, and rarely are there opportunities for discussions between faculty and participants. The faculty is usually permanent, consisting of experienced prosecutors who have or are in the process of earning an advanced degree in an area of criminal justice. At the end of the training, participants are required to turn in an academic paper on the lecture topics.

While responsibilities and duties of American and Russian or Ukrainian prosecutors are nearly the same, there are interesting differences between our systems. Russian

and Ukrainian prosecutors wear military style uniforms, in and out of court, and hold a military rank. Their Procurator General is the equivalent of our Attorney General. The accused is innocent until proven guilty. The burden of proof is on the government and must be proved by their equivalent of beyond a reasonable doubt. Russia only recently instituted jury trials, and only on an experimental basis. In a Russian jury trial, the verdict need only be unanimous if rendered during the first three hours of deliberation. After three hours, a simple majority prevails. A trial proceeds in much the same fashion, but the functions of the parties differ. The court calls all witnesses and, if during questioning it appears additional areas of investigation are suggested, the trial is adjourned and an investigation conducted. The victim has their own counsel table and is an active participant in the trial. Both countries are struggling to institute new laws and develop procedures and policies for prosecuting organized crime, white collar crime, and fraud.

The training teams were universal in their praise of the professionalism and dedication of Russian and Ukrainian prosecutors. There is no question that both countries are undergoing difficult time, but their biggest asset is their people who are very open, friendly, and interested in the United States—but proud of their country and their heritage. ❖

## OLE Publications Corner

We are planning several publications for June, including:

- A 1996 edition of the *Violent Crimes Manual*. This updated manual will have new chapters on DNA Evidence, Blood Spatter Interpretation, and Self Defense. The USABook computer version of this book should appear in early June; the hard copy of the book will be released in conjunction with OLE's Violent Crime course in Annapolis at the end of June.
- An update of the USABook version of Harvey L. Handley's annotated *Fair Housing Act*.
- A monograph on the *Statute of Limitations under the Federal Torts Claim Act* in USABook format. We are hop-

ing to make this work part of a larger civil practice book later.

We will be publishing a *Homicide Manual* in September. The core of this book will be an extensive checklist for preparing and trying homicide cases, supplemented with forms and sample memoranda. Robert Lipman, a former Assistant United States Attorney now working in the Criminal Division's Narcotics and Dangerous Drugs Section, is coordinating this project. If you are interested in reviewing this work in progress, or you have forms or ideas to contribute, please contact him at (202)514-0950 or Email CRM03(LIPMAN).

We are interested in ideas from the field on current and future projects. If you have an idea for a publication or are interested in contributing a monograph, chapter, or collection of forms, contact Assistant United States Attorney David Nissman, (809)773-3920, AVISC01(DNISSMAN). If you have ideas or questions about the USABook computer program, contact Ed Hagen, (202)616-3654 or Email AEX02(EHAGEN). ❖

## OLE Projected Courses

OLE Director Janet Craig, is pleased to announce projected course offerings for the months of June through September 1996 for the Attorney Generals' Advocacy Institute (AGAI) and the Legal Education Institute (LEI). Lists of these courses are on the following pages.

### AGAI

AGAI provides legal education programs to Assistant United States Attorneys (AUSAs) and attorneys assigned to Department of Justice (DOJ) Divisions. The courses listed are tentative; however, OLE sends Email announcements to all United States Attorneys' offices (USAOs) and DOJ Divisions approximately eight weeks prior to the courses.

### LEI

LEI provides legal education programs to all Executive Branch attorneys, paralegals, and support personnel. LEI also offers courses designed specifically for paralegal and support personnel from USAOs. OLE funds all costs for paralegals and support staff personnel from USAOs who attend LEI courses. Approximately eight weeks prior to each course, OLE sends Email announcements to all



USAOs and DOJ Divisions requesting nominations for each course. Nominations are to be returned to OLE via FAX, and then student selections are made.

Other LEI courses offered for all Executive Branch attorneys (except AUSAs), paralegals, and support personnel are officially announced via quarterly mailings to Federal departments, agencies, and USAOs. Nomination forms are available in your Administrative Office or

attached as **Appendix A**. They must be received by OLE at least 30 days prior to the commencement of each course. Notice of acceptance or non-selection will be mailed to the address typed in the address box on the nomination form approximately three weeks prior to the course. Please note that OLE does not fund travel or per diem costs for students attending LEI courses. ♦

## Office of Legal Education Contact Information

Address: Bicentennial Building, Room 7600  
600 E Street, N.W.  
Washington, D.C. 20530

Telephone: (202)616-6700  
FAX: (202)616-7487

Director .....	Janet Craig, AUSA, SDTX
Deputy Director .....	David W. Downs
Assistant Director (AGAI-Criminal) .....	Dixie Morrow, AUSA, MDGA
Assistant Director (AGAI-Criminal) .....	Mary Jude Darrow, AUSA, EDLA
Assistant Director (AGAI-Civil and Appellate) .....	Jeff Senger, Civil Rights Division
Assistant Director (AGAI-Asset Forfeiture and Financial Litigation) .....	Kathy Stark, AUSA, SDFL
Assistant Director (LEI) .....	Donna Preston
Assistant Director (LEI) .....	Eileen Gleason, AUSA, EDLA
Assistant Director (LEI-Paralegal and Support) .....	Donna Kennedy

## AGAI Courses

Date	Course	Participants
<b>JUNE</b>		
3-7	Advanced Civil Trial	AUSAs, DOJ Attorneys
4-6	Advanced Money Laundering	AUSAs, DOJ Attorneys
10-13	Native American Issues	AUSAs, DOJ Attorneys
11-13	Computer Crimes	AUSAs, DOJ Attorneys
12-14	ARPA for DOJ Attorneys	DOJ Attorneys
16-20	Environmental Crimes	AUSAs, DOJ Attorneys
18-21	Health Care Fraud	AUSAs, DOJ Attorneys
18-21	Employment Discrimination	AUSAs, DOJ Attorneys
24-26	Violent Crime & Juvenile Offenders	AUSAs, DOJ Attorneys
24-28	Appellate Advocacy	AUSAs, DOJ Attorneys
25-28	Attorney Supervisor	AUSAs, DOJ Attorneys
<b>JULY</b>		
9-12	Civil Chiefs	Civil Chiefs
9-12	Complex Prosecutions	AUSAs, DOJ Attorneys
15-24	Criminal Trial Advocacy	AUSAs, DOJ Attorneys
16-18	Federal Tort Claims Act	AUSAs, DOJ Attorneys
16-18	Advanced Asset Forfeiture	AUSAs, DOJ Attorneys
22-26	Criminal Federal Practice Seminar	AUSAs, DOJ Attorneys
23-25	Computer Crimes	AUSAs, DOJ Attorneys
29-8/2	Appellate Advocacy	AUSAs, DOJ Attorneys
30-8/1	Advanced Affirmative Civil Enforcement	Experienced AUSAs
<b>AUGUST</b>		
5-9	Advanced Criminal Trial	AUSAs, DOJ Attorneys
6-8	Computer Crimes	AUSAs, DOJ Attorneys
6-9	Evidence for Experienced Litigators	AUSAs, DOJ Attorneys
12-16	Advanced Civil Trial	AUSAs, DOJ Attorneys
13-16	International/National Security Coordinators	Security Coordinators
19-22	Attorney Supervisors	AUSAs, DOJ Attorneys
27-29	Appellate Chiefs	Appellate Chiefs, Principal AUSAs
<b>SEPTEMBER</b>		
10-12	Sixth Circuit Component	AUSAs, DOJ Attorneys
10-13	Public Corruption	AUSAs, DOJ Attorneys
17-20	Criminal Civil Rights	AUSAs, DOJ Attorneys
17-20	Civil Federal Practice Seminar	AUSAs, DOJ Attorneys
25-27	Negotiations for Assistant United States Attorneys and DOJ Trial Attorneys	AUSAs, DOJ Attorneys
25-27	Homicide Investigations and Prosecution	AUSAs, DOJ Attorneys

## LEI Courses

Date	Course	Participants
<b>JUNE</b>		
3-7	Criminal Paralegal	USAO Paralegals, DOJ Paralegals
10-13	Examination Techniques	Agency Attorneys
10-14	Basic Paralegal	USAO Paralegals, DOJ Paralegals
17-18	Bankruptcy Symposium	AUSAs, DOJ Attorneys
17-18	Evidence	Agency Attorneys
18-19	Freedom of Information Act for Attorneys & Access Professionals	Agency Attorneys
20	Privacy Act	Agency Attorneys
21	Legal Writing	Agency Attorneys and Paralegals
24-28	Appellate Paralegal	USAO Paralegals, DOJ Paralegals
<b>JULY</b>		
1-2	Agency Civil Practice	Agency Attorneys
9-10	Federal Acquisition Regulations	Agency Attorneys
10	Advanced Freedom of Information Act	Agency Attorneys
11	Freedom of Information Act Administrative Forum	Agency Attorneys
12	Computer Law	Agency Attorneys
15-19	Basic Paralegal (Agency)	Agency Paralegals
26	Legal Writing	Agency Attorneys and Paralegals
29-8/2	Research & Writing Refresher for Paralegals	USAO Paralegals, DOJ Paralegals
<b>AUGUST</b>		
5-9	Experienced Legal Secretaries	USAO Paralegals, DOJ Paralegals
12	Statutes & Legislative Histories	Agency Attorneys
13	Introduction to Freedom of Information Act	Agency Attorneys
14-16	Attorney Supervisors	Agency Attorneys
19-21	Discovery	Agency Attorneys
19-23	Civil Paralegal	USAO Paralegals, DOJ Paralegals
22-23	Freedom of Information Act for Attorneys & Access Professionals	Agency Attorneys
26-28	Environmental Law	Agency Attorneys
30	Appellate Skills	Agency Attorneys
<b>SEPTEMBER</b>		
9	Ethics for Litigators	Agency Attorneys
9-13	Legal Support	USAO/DOJ Legal Support
11-12	Evidence	Agency Attorneys
16-19	Examination Techniques	Agency Attorneys
17-20	Grand Jury Coordinators	USAO Grand Jury Clerks
20	Fraud, Debarment & Suspension	Agency Attorneys
24	Ethics & Professional Conduct	Agency Attorneys
25-27	Advanced Negotiation Skills	Agency Attorneys
27	Legal Writing	Agency Attorneys/Paralegals
30	Computer Assisted Legal Research	Agency Attorneys/Support Staff



# WordPerfect Tips

## Redefining the Keyboard

In previous columns we have discussed the creation of macros. Macros are called by pressing an <Alt> letter key ("altkey macros"), or by typing in a macro name after pressing <Alt><F10> (named macros). Macros can also be called a third way, by redefining the keyboard; WordPerfect allows users to attach macros or change the value of almost any key or key combination.

This should be done with caution. You should not redefine any of the keys you use now. You should avoid creating shortcuts that significantly change the way you use WordPerfect, because it will make it uncomfortable for you when you are sitting at other computers that do not have your customized keyboard. Those caveats in mind, let's walk through the process of creating a customized keyboard that gives us a bullet symbol in a single keystroke.

Press <Shift><F1>, and select **5 - Keyboard Layout**, followed by **4 Create**. You will be prompted for a **Keyboard Filename**. Enter any name here, and press <Enter>. Next, select it as your current keyboard with **1 Select**. Then select **5 - Keyboard Layout** again, and **7 Edit**. To add a key definition, select **4 Create**.

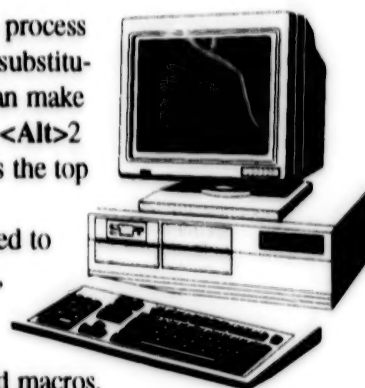
You will be prompted for the key to be redefined. For this exercise, I have selected the "" key, the "accent" key above <Tab>. I never use this key; if I want to accent a letter, I use WordPerfect's compose feature instead (for directions on using compose, type <F3>, and then <Ctrl>v). Also, the key looks a little like a bullet symbol, making it easy to remember.

After pressing "", you will be prompted for a description; enter one if you wish. A macro edit box will be displayed containing the single character ` . Delete that character. Bullets are normally created by pressing <Ctrl>v, followed by \*\*. Those keystrokes need to be entered in the macro box. The <Ctrl>v combination has a special meaning in macro boxes, so to insert it in the box, you will have to press <Ctrl>v twice. Then insert the \*\*, so that the box reads {^V}\*\*, and press <F7> three times. From this point on, pressing the ` key will result in a bullet symbol.

You can use the same process to create other useful key substitutions. For example, you can make <Alt>1 spell out January, <Alt>2 February, and so on across the top of the keyboard.

Macros can be assigned to keys. For "altkey" macros, press <Ctrl>v followed by the altkey while in the macro edit box. For named macros, press <F10>, followed by the macro name, and then press <Ctrl>v and <Enter>.

Key definitions can be edited and deleted. Different keyboards can be used for specialized tasks. To abandon a customized keyboard so that you can use the original key values, select **6 Original** at the Keyboard Layout menu.



## Saving WordPerfect Documents

*Joe Stutler*

*Eastern District of North Carolina*

For anyone who has wondered if you can start an Email message, save it, and retrieve it for sending at a later time the answer is **yes**.

If you are typing in Email, the MESSAGE PORTION ONLY can be saved into your UDD directory by pressing <F10> and typing in a document name. The MESSAGE can be retrieved later by entering Email, moving the cursor to the MESSAGE portion of the screen, and then pressing the <SHIFT-F10> keys. This puts the message back into the MESSAGE section.

While the MESSAGE is a file, it can be retrieved into either WP5.1 or WP6.1 and updated, spell checked, or edited in any other manner. Following editing, the document must be saved as a WP4.2 document so it will be readable in the Email system.

If you know you are going to prepare a long message in Email, you can actually create the message in WordPerfect, polish it to your liking, then save it as a WP4.2 document. The document can then be retrieved into the MESSAGE portion of the Email as indicated above. ❖

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# DOJ Highlights

## Appointments

### OCDETF Director

On April 1, 1996, Criminal Division Deputy Assistant Attorney General Mary Lee Warren, along with Attorney General Reno and Deputy Attorney General Gorelick, announced the selection of Assistant United States Attorney Kenneth Magidson as the new Director of the Executive Office for the Organized Crime Drug Enforcement Task Forces program. On May 12, 1996, he began to lead the Executive Office's efforts to reinvigorate and reestablish OCDETF as the premier drug enforcement program. Ken is from the United States Attorney's office for the Southern District of Texas, where he served since January 1987 as an OCDETF AUSA Coordinator for the Gulf Coast Region. He has a wide and well-earned reputation as a leading prosecutor, having been responsible for major drug trafficking, RICO, and money laundering cases at the federal level; capital murder, rape, robbery, and kidnapping cases at the state level; and as the AUSA Coordinator representative to the Washington Agency Representatives Group, where he contributed insights and expertise at the headquarters level on national policy issues. ♦

## Honors and Awards

### Attorney Don Russell Receives Antitrust Division's Neil Roberts Award for Excellence

On March 27, 1996, DOJ Antitrust Division Attorney Don Russell received the Division's first annual Neil Roberts Award for Excellence in Antitrust Enforcement. "This award was created to recognize an individual who not only performs outstanding legal work and provides sound advice, but commends a great deal of respect and affection," said Assistant Attorney General Anne K.

Bingaman, Antitrust Division. The award is named after Neil E. Roberts, who retired in February 1995 after 20 years as chief of the Antitrust Division's Legal Policy Section. ♦

## Administrative Office of the U.S. Courts

### Judicial Conference Acts on Cameras in Court

On March 12, 1996, the Judicial Conference of the United States approved a resolution stating, "Each court of appeals may decide for itself whether to permit the taking of photographs and radio and television coverage of appellate arguments, subject to any restrictions in statutes, national and local rules, and such guidelines as the Conference may adopt." In addition, the Conference voted to strongly urge each circuit judicial council to adopt pursuant to 28 U.S.C. Sec. 332(d)(1) an order reflecting the Conference's September 1994 decision not to permit the taking of photographs and radio and television coverage of proceedings in U.S. district courts. The Conference also voted to strongly urge circuit judicial councils to abrogate any local rules of court that conflict with this decision, pursuant to 28 U.S.C. Sec. 2071(c)(1). At its September 1990 session, the Judicial Conference established a cameras in court pilot program for civil cases in only two courts of appeals and six district courts. At its September 1994 meeting, the Conference declined to expand the experiment, citing the intimidating effect cameras may have on some witnesses and jurors. The cameras in court pilot program concluded on December 31, 1994. In other actions, the Conference:

- Agreed to reduce the 75 cents per minute fee for electronic public access to court data to 60 cents per minute. In the federal Judiciary's 1990 appropriations act, Congress directed the Judicial Conference to prescribe and collect

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fees for access to information available through automatic data processing equipment. The law further requires that the fees be used to pay for the expenses incurred in providing electronic public access services. At its March 1991 meeting, the Conference established a fee of \$1 per minute. In March 1995, the Conference reduced the fee to 75 cents per minute.

- Endorsed videoconferencing as a viable optional case management tool in civil prisoner rights pretrial proceedings, and authorized the expenditure of funds to expand the videoconferencing program of such cases in district courts that meet established criteria. In recent years, the Conference has endorsed the use of videoconferencing technology to reduce cost and delay in civil proceedings. The Eastern District of Texas, the Western District of Missouri, and the Middle District of Louisiana have been using videoconferencing for prisoner civil rights proceedings, and the Western District of Texas has used videoconferencing to conduct certain routine bankruptcy proceedings. Overall, the pilot programs were considered a success by the participating judges and courts, and demonstrated that videoconferencing has the potential to offer net benefits to courts, depending on workload and business practices.

- Agreed to include in its biennial survey of judgeship needs, reviews of the need to eliminate judgeship positions or leave judgeships unfilled, and communicate to Congress any recommendations regarding eliminations along with requests for additional judgeships. The Conference also voted to urge Congress to continue filling vacancies as they occur and act on judgeship requirements—including the need to increase or decrease the number—as a total package. In January 1995, the Conference transmitted to Congress draft legislation to create 20 additional temporary court of appeals judgeships and 18 permanent and 5 temporary district court judgeships.

- Adopted a courthouse rent reduction and cost containment plan. Rent costs account for a significant and growing portion of Judiciary expenditures. In FY 96 the Judiciary will pay more than \$500 million—19 percent of its Salaries and Expenses appropriation—to the General Services Administration for rent.

- Agreed to inform House and Senate leadership that

proposed amendments pertaining to closed circuit televising of certain criminal proceedings, if enacted, should be modified to remove any prohibition relating to the expenditure of appropriated funds and that any requirement that courts order closed circuit televising of criminal proceedings should be made discretionary to the judge.

- Referred to its Criminal Law Committee the Attorney General's proposal for universal pre-appearance drug testing and instructed the Committee to report back expeditiously to the Executive Committee, which was authorized to act for the Conference on the matter. In December 1995, President Clinton forwarded a memorandum to the Attorney General directing her to develop a "... universal policy providing for drug testing of all federal arrestees before decisions are made on whether to release them into the community pending trial." In mid-February, the Attorney General sought input from the Judiciary. The proposed universal pre-appearance drug testing potentially would have a significant impact on the Judiciary's budget. While the issue is being studied further by the Criminal Law Committee, the Administrative Office of the U.S. Courts will continue to work actively with other groups who are studying implementation of the proposal.

- Agreed to write to the chairs of the House and Senate Appropriations subcommittees that oversee the Judiciary's budget to seek guidance on the use of appropriated funds to conduct gender bias studies in the courts. Specifically, the letters will state that subject to the disapproval of the congressional subcommittees, it is the intent of the Conference to fund the continuation of ongoing studies to their completion. Funds will not be provided for new studies. The Violent Crime Control and Law Enforcement Act of 1994 encouraged the circuit judicial councils to conduct studies of the instances, if any, of gender bias in their respective circuit.

The Judicial Conference of the United States is the principal policy-making body for the federal court system. It is chaired by the Chief Justice of the United States and composed of the chief judges of the 13 U.S. courts of appeals, a district judge elected from each of the 12 geographic circuits, and the chief judge of the Court of International Trade. The chair of the Executive Committee of the Conference presides when the Chief Justice is not present. The Conference meets twice a year to consider



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administrative and policy issues affecting the court system and to make recommendations to Congress concerning legislation involving the Judicial Branch. ❖

## Antitrust Division

### Report of Antitrust Division's Enforcement Actions

On March 28, 1996, the Antitrust Division issued a report summarizing the Division's enforcement actions since October 1992. The report highlights the Division's activities in the following categories: international, criminal, telecommunications, mergers, civil non-mergers, and the Division's guidance to the business community. For further information, contact Janie Ingalls, Antitrust Division, (202)514-2481. ❖

## Criminal Division

### Courts Divided over Pretrial Restraint of Substitute Assets

On March 18, 1996, in a memo from Asset Forfeiture and Money Laundering Section Chief Gerald E. McDowell, Criminal Division, to United States Attorneys and DOJ Law Enforcement Agencies, concerning the exemption of certain assets from pretrial restraint of substitute assets, Mr. McDowell announced that the courts are divided over whether the criminal forfeiture statutes permit the pretrial restraint of substitute assets. Under 18 U.S.C. § 1963(d)(1) and 21 U.S.C. § 853(e)(1), a court may enter a pretrial restraining order to preserve the availability of forfeitable property pending trial. Some courts have decided that the restraining order provisions apply both to property directly traceable to the offense and to property forfeitable as substitute assets. The Third, Fifth, Eighth, and Ninth Circuits have held that because Congress did not specifically reference the substitute assets provisions [18 U.S.C. § 1963(m) and 21 U.S.C. § 853(p)] in the restraining order statutes, pretrial restraint of substitute assets is not permitted. The Department is proposing legislation to remedy this situation. Unlike property derived from or used in criminal

activity and therefore directly subject to forfeiture, substitute assets are legitimate assets of the defendant not otherwise subject to forfeiture. While it is appropriate to deny the defendant the use of directly forfeitable property to pay attorneys' fees or their living expenses pending trial, the same rationale does not apply to substitute assets. The Department's legislative proposal contains a provision authorizing certain exemptions for funds needed to pay attorneys' fees, necessary living expenses, and the expenses of maintaining restrained assets from such restraining orders. To be consistent with the Department's position, United States Attorneys should adhere to the Department's policy: where orders restraining substitute assets are permitted and entered, United States Attorneys should agree to allow the exemption from such orders of those legitimate assets that are needed to pay attorneys' fees, necessary living expenses, and the expenses of maintaining restrained assets. ❖

### Seized Cash Management Policy, Double Jeopardy Decisions

On March 15, 1996, in Policy Directive 96-2 from Asset Forfeiture and Money Laundering Section Chief Gerald E. McDowell, Criminal Division, to United States Attorneys and Law Enforcement Agencies of DOJ, the policy for handling seized cash, established in the *Attorney General's Guidelines on Seized and Forfeited Property*, was restated as follows:

Seized cash, except where it is to be used as evidence, is to be deposited promptly in the Seized Asset Deposit Fund pending forfeiture. The [Chief of the Asset Forfeiture and Money Laundering Section] may grant exceptions to this policy in extraordinary circumstances. Transfer of cash to the United States Marshal should occur within 60 days of seizure or 10 days of indictment.

The memo also listed points concerning the policy for personnel handling cash seized for judicial forfeiture. Steps that prosecutors and seizing agencies may take to accomplish the goals of asset forfeiture without jeopardizing a criminal prosecution are included in Policy Directive 95-1 discussing, *inter alia*, suspension of administrative forfei-

ture proceedings to avoid double jeopardy, and basing forfeiture and criminal prosecutions, respectively, on separate conduct or separate offenses. A legal memorandum setting forth the current state of double jeopardy law and strategies for avoiding double jeopardy problems is available on the Asset Forfeiture Bulletin Board. See "Status of Double Jeopardy Law in the Sixth Circuit" (Jan 1996). For further information, contact Assistant United States Attorney Suzanne Warner, EOUSA's Programs office, (202)616-6444. ❖

## Implementation of Guidelines for Pre-Seizure Planning

On March 18, 1996, Asset Forfeiture and Money Laundering Section Chief Gerald E. McDowell, Criminal Division, reminded United States Attorneys and DOJ Law Enforcement Agencies in Policy Directive 96-4 that per Guidelines for Pre-Seizure Planning ("Guidelines"), Directive 94-2, the Marshal Service should be promptly advised prior to all significant seizures, the filing of civil forfeiture complaints, or the return of indictments containing forfeiture counts. The Guidelines state that formal pre-seizure planning, either in the form of a meeting or a telephone call, is required at least once prior to the seizure of the following assets: real property of all types; businesses; animals; large quantities of assets involving potential storage problems (e.g., 50 vehicles); and unusual assets (e.g., leasehold agreements, partnership interests, valuable art, and antiques). Pre-seizure planning should occur with respect to property that will be "posted" as well as property that is to be seized. Additional issues concerning the Guidelines, including provisions to be included in forfeiture orders, are also provided in the March 18 memo. A copy of this memo is available on the Asset Forfeiture Bulletin Board. If you would like a copy of the memo or need further information, please contact Assistant United States Attorney Suzanne Warner, EOUSA's Programs office, (202)616-6444. ❖

## Cargo Theft

On May 8, 1996, in a memo from Acting Assistant Attorney General John C. Keeney, Criminal Division, to United States Attorneys, he discussed initiatives to support the Attorney General's commitment to increase federal enforcement efforts to combat cargo theft. Cargo theft is a major crime problem in this country, with estimates of losses nationwide at \$3.5 to \$10 billion per year. Although the problem is particularly serious in the port areas of Miami, New York/New Jersey, and Los Angeles/Long Beach, most other areas are severely affected. Cargo theft is no longer the domain of local thieves and fences. Organized criminal groups from Ecuador, Peru, and elsewhere are now major players on the cargo theft scene, and Ecuadorean/Peruvian groups operate up and down the east and west coasts, and inland. They are highly sophisticated in identifying vulnerable targets, efficiently executing thefts, and promptly disposing of stolen goods. FBI Special Agents-in-Charge of the various Field Divisions will be contacting United States Attorneys to give them a preliminary briefing on the cargo theft initiative, with a view to developing a coherent, coordinated law enforcement response to the problem on a district-to-district basis. For additional information, please contact Deputy Assistant Attorney General Kevin V. Di Gregory, Criminal Division, (202)514-9725. ❖

## Preparation for Challenges to Enclave Jurisdiction

In every case in which federal jurisdiction is based upon the offense having been committed within an enclave within the "special maritime and territorial jurisdiction of the United States," 18 U.S.C. § 7(3), the government must be prepared to prove that exclusive or concurrent jurisdiction was acquired, should jurisdiction be challenged. For lands acquired after October 9, 1940, 40 U.S.C. § 255 requires "the filing [of] a notice of . . . acceptance with the Governor of the State or in such other manner as may be prescribed by the laws of the state where such lands are situated." It does not matter that the United States initially requested, and the state legislature granted, jurisdiction. In the absence of compliance, it is "conclusively presumed

that no such jurisdiction has been accepted." *Id.* See, *Adams v. United States*, 319 U.S. 312, 315 (1943); *United States v. Johnson*, 994 F.2d 980, 985 (2nd Cir. 1993); *Hankins v. Delo*, 977 F.2d 396, 397-398 (8th Cir. 1992). Although the notice method is preferred, the alternative method will suffice. *United States v. Johnson*, *supra*.

"It is recommended that, in coordination with the local FBI Field Office or Resident Agency, you contact the attorney for each federal facility within your district to determine what degree of federal jurisdiction is claimed and to obtain supporting documentation. In conducting the survey, you should remind the agency attorney that many facilities comprise parcels of differing levels of jurisdiction, reflecting their acquisition at different times, which must be accounted for individually. Conversely, modifications in jurisdiction resulting from retrocessions or from significant changes in the use to which the property has been put since acquisition must also be taken into account. Such a survey will permit the correction of any procedural oversights and prevent surprise and delay and possible dismissal of a case at trial." ♦

## Office of Justice Programs

### Working with United States Attorneys to Make America's Communities Stronger

*Assistant Attorney General Laurie Robinson  
Office of Justice Programs*

In recent years, United States Attorneys have been challenged to expand their role beyond that of traditional federal prosecutors and serve as the Department's link to local efforts to make communities safer. Through the various crime strategies and community-based initiatives—such as the Comprehensive Communities Program, PACT, and Weed and Seed—United States Attorneys have worked to make a difference.

Beginning with this issue, I intend to use this column to regularly provide you with information on available publications, effective programs, grant funds, and technical assistance and training to assist you in your role as coordinator of community-based initiatives.

I would like to thank each of you, especially United States Attorney Fred Thieman, Western District of

Pennsylvania—with whom OJP has worked extensively over the last year or so—for working so hard with his AGAC Subcommittee on Controlled Substances/Drug Abuse Prevention to open the lines of communication. I look forward to working with United States Attorney Mike Dettmer, Western District of Michigan, and the newly established Subcommittee on Justice Programs.

If you are working on an initiative with OJP that you think would be of value to your colleagues that could be communicated in this column, please contact Marlene Beckman at (202)307-5933. I hope that you find this information helpful. ♦

### OJP Documents

The following OJP documents may be of interest to jurisdictions in your district:

**350 Tested Strategies to Prevent Crime: A Resource for Municipal Agencies and Community Groups.** assists communities tailoring proven crime prevention techniques to local needs and developing long-term comprehensive prevention plans. A complimentary copy of the document was sent to your office in early April. For additional copies, contact the National Crime Prevention Council at (800)627-2911. Purchase Orders or Credit Card Orders can be faxed to (518)843-6857. The item number is M-50 and costs \$39.95 plus \$3.95 shipping and handling.

**Reducing Gun Violence: What Communities Can Do,** presents three major strategies that have been used to change attitudes among youth and others in the community to reduce acceptance and use of violence. The publication also includes information on creating partnerships among law enforcement agencies and the community and identifying available government resources. For free copies of this document, contact the National Criminal Justice Reference Service at (800)851-3420.

**Differentiated Case Management** describes a technique courts can use to tailor the case management process to the requirements of individual cases and

*continued on page 88*



*continued from page 87*

provides a mechanism for processing each case in accordance with the time frame and judicial system resources required. There currently are ten pilot districts in the Federal court system. There are a series of documents available on Differentiated Case Management—a Fact Sheet, a BJA Courts Bulletin, a Program Brief, and an Implementation Manual. For copies of any of these documents, contact the National Criminal Justice Reference Service at (800)851-3420.

**Combatting Violence and Delinquency: The National Juvenile Justice Action Plan**, prepared by the Coordinating Council on Juvenile Justice and Delinquency Prevention, establishes eight key objectives as a rallying point for public officials and concerned citizens seeking solutions to the problem of youth violence. To obtain a free copy, contact the Juvenile Justice Clearinghouse at (800)638-8736.

**What Works: Promising Interventions in Juvenile Justice and Delinquency Prevention Works**, both profile successful juvenile justice initiatives being employed in sites across the country. To obtain a free copy of either of these documents, contact the Juvenile Justice Clearinghouse at (800)638-8736.

#### **OJP Toll-free Numbers for Assistance**

As many of you know, in 1994 the Department of Justice established a **Response Center** to answer questions about OJP grants and how to apply for them. This number, (800)421-6770, receives hundreds of calls a day and continues to serve OJP constituents.

Last month, OJP established a special toll-free number, in addition to the Response Center number, that individuals can call for information about **corrections funding and training opportunities**. By calling (800)848-6325, callers can ask BJA Crime Act program specialists grant-related questions and request technical assistance and training. These requests may be further explored via conference call with the National Institute of Corrections, or the actual technical assistance provider, if appropriate.

Please feel free to use these numbers or refer your state and local colleagues to either of them. ❖

## **Drug Enforcement Administration**

### **Constantine Says, Turn Attention on Highest Level Traffickers**

On April 23, 1996, at the fourteenth annual meeting of the International Drug Enforcement Conference (IDEC) in Mexico City, DEA Administrator Thomas A. Constantine challenged law enforcement from 29 nations to "complete the work that was done in 1995 when six of the seven top Cali mafia drug lords were arrested by or surrendered to the Colombian National Police." IDEC was established in 1983 to bring upper-level drug law enforcement officials from South, Central, and North America together to share drug-related intelligence and to develop an operational strategy that can be used against international drug traffickers. Drug enforcement officials reported on challenges in all aspects of drug enforcement and discussed ways to enhance regional cooperation to maximize effectiveness against trafficking organizations. Constantine praised the Colombian National Police for "dedication and courage" in their work against the Cali mafia, complimented the Mexican Government for its arrest and quick expulsion of Juan Garcia-Abrego in January, and commended the Panamanian authorities—the Fiscal and the Policia Tecnica Judicial—for the April 17 arrest of Jose Antonio Castrillon-Henao, a major maritime narcotics trafficker whose organization makes regular cocaine shipments from Colombia in an operation which underscores the importance of the international cooperation upon which IDEC is founded. ❖

## **Bureau of Justice Statistics**

### **Availability of BJA's Spring 1996 List of Publications**

On March 21, 1996, in a memorandum from BJA Director Nancy Gist to the Attorney General, BJS announced that BJA's Publications List is available. The document is a complete list of BJA publications and new materials are highlighted. Information for ordering publications listed in the document is also provided. To order a

copy of this list, please contact the BJA Clearinghouse, P.O. Box 6000, Rockville, Maryland 20849-6000, or call (800)688-4252. ❖

## **Violent and Property Crime Victimization Fall**

**O**n April 17, 1996, the DOJ reported from a Bureau of Justice Statistics crime victimization survey, that violent and property crime victimizations fell almost three percent from 1993 to 1994. (These statistics exclude murder because of an inability to question the victims. The FBI reported 23,305 murders and non-negligent manslaughters during 1994.) The three percent fall of violent and property crime victimizations from 1993 to 1994 represents a leveling off after falling 20 percent between 1981 and 1986 and rising 15 percent from 1986 through 1991. Property crimes continued a general 15-year decline. During 1994, there were an estimated 10.9 million violent crimes, including 6.6 million simple assaults, 2.5 million aggravated assaults, 1.3 million robberies, and 430,000 rapes or other sexual assaults. According to the survey, the figures were essentially the same for 1992 and 1993. If you would like a copy of the bulletin, "Criminal Victimization 1994," please contact the BJS Clearinghouse, (800)732-3277 or fax orders to (410)792-4358. BJS's home page on the Internet is <http://www.ojp.usdoj.gov/bjs>. ❖

## **Firearm Injuries from Crimes**

**O**n April 11, 1996, EOUSA Director Carol DiBattiste forwarded to United States Attorneys a Bureau of Justice Statistics press release on "Firearm Injuries from Crimes." The release refers to an April 1996 report on firearm injuries from crime. If you would like a copy of the press release, please contact Stu Smith, Bureau of Justice Statistics, (202)307-0784. Single copies of the report may be obtained by contacting the BJS Clearinghouse at the numbers or Internet address in the previous paragraph. ❖

## **Increase in Blacks, Hispanics, and Women in Law Enforcement Agencies**

**O**n April 7, 1996, data from a DOJ report describing the characteristics of the more than 12,000 county and municipal police departments in the United States reported that as of June 30, 1993, blacks accounted for 11.3 percent of the sworn police officers in city and county law enforcement agencies, compared to 10.5 percent in 1990 and 9.3 percent in 1987. The percentage of Hispanic officers was 6.1 percent in 1993, up from 5.2 percent in 1990 and 4.5 percent in 1987. Women comprised 8.8 percent of local police officers in 1993, compared to 8.1 percent in 1990 and 7.6 percent in 1987. The report, "Local Police Departments, 1993," is available on the Internet at <http://www.ojp.usdoj.gov/bjs>. For printed copies, contact the BJS Clearinghouse, Box 179, Annapolis Junction, Maryland 20701-0179, or fax orders to (410)792-4358. ❖

## **Office of Community Oriented Policing Services**

### **Grants for More Officers and for Police Departments and Sheriffs' Offices**

**O**n March 29, 1996, DOJ's COPS office announced that under the provisions of the 1994 Crime Act, 288 policing departments will receive grants of more than \$14.6 million to redeploy nearly 1,000 officers to the streets. The grants were awarded to jurisdictions in 36 states. Police departments and sheriffs' offices in North Carolina, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, and West Virginia are also receiving grants. Nationwide, the Administration has provided funding to put an additional 34,000 officers on the streets. For additional information, please contact the COPS Communications Division, (202)616-1728. ❖

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## Federal Bureau of Investigation

### Serious Crimes Reported Decreased in 1995

On May 5, 1996, the FBI reported that serious crimes reported to the Nation's law enforcement agencies decreased two percent in 1995 as compared to 1994, according to preliminary Uniform Crime Reporting Program figures released. It was the fourth consecutive yearly decrease in reported crime. In the violent crime category, murder showed the greatest decline in 1995—eight percent. Other decreases in violent offenses were seven percent for robbery, six for forcible rape, and three for aggravated assault. The complete Preliminary Annual Uniform Crime Report is available on the FBI's Internet World Wide Web site at <http://www.fbi.gov>. ♦

## Immigration and Naturalization Service

### Rule Allows Abusers' Family Members to Self-Petition to Become Legal Residents

On March 26, 1996, DOJ announced that INS is publishing a rule to allow abused spouses and children of citizens of legal permanent residents to self-petition to become legal permanent residents in the United States. The rule implements a provision of the Violence Against Women Act, which was enacted as part of President Clinton's Violent Crime Control Act of 1994. Commissioner Doris Meissner said, "Under this new procedure, family members who would otherwise be eligible for permanent residency will no longer be forced to rely on an abuser to remain in the United States." In a number of cases, immigrant women living in the United States have reported that their abusive spouses have threatened to have them deported if they do not comply with the abusers' wishes. Some abusers have refused to file the immigrant

relative petitions that would allow their spouses and children to apply for permanent residence, and others have threatened to withdraw petitions already filed which remained under their control. ♦

## Solicitor General

***Bennis v. Michigan*, No. 94-8729. Argued as amicus curiae Nov. 29, 1995, by James A. Feldman, Assistant to the Solicitor General (Decided Mar. 4, 1996).**

Petitioner's husband was convicted of engaging in sexual activity with a prostitute. Pursuant to a state statute, the trial court forfeited the car used by the husband during the crime, allowing no offset for petitioner's interest in the car, despite her lack of knowledge of or consent to the illegal use. Petitioner argued that this violated her Fourteenth Amendment right to due process and was an impermissible uncompensated taking of private property for public use.

The Supreme Court, per Rehnquist, C.J., affirming the forfeiture, noted that it would deal with extreme cases (such as forfeiture of an ocean liner for one passenger's offense) when they arose. The Court also held that the forfeiture was not an unconstitutional "taking." Because the Court rejected petitioner's due process challenge to the abatement proceeding, the state lawfully acquired title to the car under the exercise of authority other than the power of eminent domain. Under the Court's precedents, that relieved the state of the obligation to make just compensation.

Justices Thomas and Ginsburg concurred. Justice Thomas noted the seeming unfairness of this holding but affirmed the forfeiture because of "200 years of this Court's precedent." Justice Ginsburg emphasized that the car was forfeitable as property of the husband; that she understood the state court below to "stand[] ready to police exorbitant applications of the statute"; and that here the trial court declined to order the proceeds divided because the petitioner had another car, and because the forfeited car was worth so little that there was almost nothing left after deducting costs.



Justice Stevens, joined by Justices Souter and Breyer, dissented, as did Justice Kennedy. Justice Stevens argued that the property and the violation lacked sufficient nexus to forfeit the car as an instrumentality, and that fundamental fairness and due process barred punishing petitioner for her husband's act. Justice Stevens also believed that the forfeiture violated the Eighth Amendment as an excessive fine. Justice Kennedy would have not have extended the admiralty cases on which the Court relied to cars, "a practical necessity in modern life for so many people," believing that the state had adequate alternatives for protecting its interests, such as "a strong presumption of negligent entrustment or criminal complicity." ❖

***Varity Corp. v. Howe*, No. 94-1471. Argued as amicus curiae Nov. 1, 1995, by Edwin S. Kneedler, Deputy Solicitor General (Decided Mar. 19, 1996).**

After deciding to transfer unprofitable divisions in subsidiary Massey-Ferguson, Inc. (MF) to separately incorporated subsidiary Massey Combines (Massey), petitioner (plan administrator of MF and employer) held a meeting to persuade those divisions' employees to change employers and benefit plans. Petitioner falsely conveyed to respondent employees that their benefits would remain secure. When Massey ended two years' receivership, the employees who transferred lost their nonpension benefits and sued under ERISA seeking what they would have been owed had they not transferred, claiming petitioner tricked them into forfeiting their benefits by leaving the old plan. The district court found that petitioner's and MF's deliberate deception as plan fiduciaries harmed plan beneficiaries, violating ERISA § 404(a)'s fiduciary obligation to administer MF's plan "solely in the interest of the [plan's] participants and beneficiaries;" that ERISA § 503(a)(3) entitled respondents to "appropriate equitable relief ... to redress" their individually suffered harm; and that such relief included reinstatement to the old plan.

The Supreme Court, per Breyer, J., affirmed. It held that petitioner was a fiduciary because it exercised discretionary authority respecting the plan's management or

administration (ERISA § 3(21)(A)) when it significantly and deliberately misled respondents. The petitioner violated ERISA § 404 because knowing and significant participation in deceiving a plan's beneficiaries to save the employer money at the beneficiaries' expense was not action "solely in the interest of the participants and beneficiaries." The Court also held that relief need not run solely to the plan, because § 502(a)(3) authorizes lawsuits for individualized equitable relief for breach of fiduciary obligations.

Justice Thomas joined by Justices O'Connor and Scalia dissented. Invoking ERISA's text and structure, the dissent argued that § 502(a)(3) didn't allow individual relief. Contending that petitioner's misrepresentations were not "plan administration," the dissent also argued that petitioner's plan-related activity was not a breach of fiduciary duty. ❖

***Seminole Tribe of Florida v. Florida*, No. 94-12. Argued as amicus curiae Oct. 11, 1995, by Solicitor General Drew S. Days, III (Decided Mar. 27, 1996).**

Petitioner tribe filed suit under the Indian Gaming Regulatory Act (IGRA) to compel respondents of the state of Florida and its governor to negotiate in good faith over allowing casino gambling. The Supreme Court, per Rehnquist, C.J., affirmed a lower court dismissal of the complaint, holding that while IGRA purported to abrogate the state's immunity, Congress lacked the power to do so under the Indian Commerce Clause. The Court noted that no one contended that IGRA was enacted pursuant to one of the Civil War Amendments' enforcement clauses. Recognizing no distinction between the Interstate and Indian Commerce Clauses, the Court rejected the argument that in the plan of the Constitutional Convention, the states ceded authority to the federal government, against whose constitutional exercises of such powers the states accordingly enjoyed no immunity. The Eleventh Amendment embodied a background principle of state sovereign immunity limiting Article III's jurisdictional grant beyond what the words of the Amendment would suggest. ❖

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***O'Connor v. Consolidated Coin Caterers Corp.*, No. 95-354. Argued as amicus curiae Feb. 27, 1996, by Paul R.W. Wolfson, Assistant to the Solicitor General (Decided Apr. 1, 1996).**

**P**etitioner sued his former employer under the Age Discrimination in Employment Act (ADEA) after he

was discharged at age 56. The district court granted summary judgment for respondent employer; the person who replaced petitioner was 40 years old and thus not outside the class protected by ADEA. The Supreme Court, per Scalia, J., reversed. Although ADEA's reach is limited to those aged 40 or older, the statute protects against discrimination because of an individual's age, not discrimination because a person is aged 40 or older. The fact that the replacement is inside or outside the protected class is thus irrelevant. ❖

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## Ethics and Professional Responsibility

### ***Brady* Disclosure Obligations Regarding Unconfirmed Report**

**A** police officer alleged that a federal prosecutor failed to meet *Brady* disclosure obligations in a case in which an IRS agent testified that the defendant and his sister had never filed tax returns. Just before closing arguments, the prosecutor mentioned this testimony to the police officer, who claimed that he had seen tax returns the sister had filed. The prosecutor was skeptical of this report because he knew the IRS agent to be especially reliable and peculiar circumstances led the prosecutor to believe that the IRS's search for returns was also especially reliable. Although the prosecutor asked the IRS to check the officer's claim, he did not notify the court or the defense. Following a closing argument in which the prosecutor referred to the agent's testimony about the returns, the defendant was convicted.

The following day the prosecutor learned that the defendant's sister had indeed filed returns. He immediately notified the defense and the court, which eventually denied the defendant's motion for a new trial because the sister's returns were not relevant to the defendant's innocence.

OPR concluded that the prosecutor had not acted unethically in not disclosing the officer's unconfirmed report until after closing argument. The prosecutor did not know whether the report was reliable, and he had compelling evidence of non-filing because of the original search and the sworn testimony of a trusted agent. Furthermore, the prosecutor took immediate action when he learned that the defendant's sister had filed returns. Under these circumstances, OPR concluded that the prosecutor had not committed misconduct. ❖

### **Misconduct Toward Judge**

**A** federal prosecutor who was unhappy with a court's decision to deviate from the guidelines in sentencing a defendant told the press: "[T]he prosecution did its job, the jury did its job, and when it comes time [for] sentencing, the judge doesn't follow the law as required under the guidelines." The prosecutor did not deny making the statement but contended that the statement did not impugn the integrity of the court. OPR concluded that the prosecutor committed misconduct. ❖

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# Career Opportunities

The U. S. Department of Justice is an Equal Opportunity/Reasonable Accommodation Employer. It is the policy of the Department of Justice to achieve a drug-free workplace and persons selected for these positions will be required to pass a urinalysis test to screen for illegal drug use prior to final appointment.

## Experienced Attorney, GS-13 to GS-15 Civil Rights Division, Voting Section

DOJ's Office of Attorney Personnel Management is seeking an experienced attorney to serve as an Attorney Reviewer in the Voting Section, Civil Rights Division, in Washington D.C. The Voting Section enforces laws designed to safeguard the right to vote of racial and language minorities and members of other specially affected groups. Pursuant to Section 5 of the Voting Rights Act, the Section also reviews administrative voting changes submitted to the Attorney General to determine whether the changes are discriminatory in purpose or effect. This includes the review of such matters as changes in the methods by which state and local officials are elected and redistricting plans. Attorney Reviewers are given significant oversight responsibility for the review by both attorneys and highly skilled civil rights analysts of voting changes submitted for administrative review. In this capacity, Attorney Reviewers perform an extremely important function and are an integral component of the administrative review process.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least three years post-J.D. experience. Applicants must also possess good organizational and planning skills, good writing and analytical skills, the ability to handle multiple matters simultaneously, the ability to direct and guide others towards the successful completion of their work, and the ability to establish and maintain harmonious working relationships. Applicants must submit Optional Application for Federal Employment (OF-612) or resume, writing sample, and current performance appraisal to:

U.S. Department of Justice  
Civil Rights Division  
Voting Section  
Attn: Attorney Reviewer Advertisement  
GS-13/15  
P.O. Box 66128  
Washington, DC 20035-6128

A current SF-171 (Application for Federal Employment) will still be accepted as well. No telephone calls please. Current salary and years of experience will determine the appropriate salary level ranging from GS-13 (\$52,867 to \$68,729) to GS-15 (\$73,486 to \$95,531). This position will remain open until filled but no later than June 30, 1996. ♦

## Experienced Attorneys, GS-12 to GS-15 Civil Rights Division, Voting Section

DOJ's Office of Attorney Personnel Management is seeking experienced attorneys to work in the Voting Section, Civil Rights Division, in Washington, D.C. The Voting Section enforces laws designed to safeguard the right to vote of racial and language minorities and members of other specially affected groups. In enforcing the Voting Rights Act, the Section brings lawsuits against state and local jurisdictions to challenge unfair election systems. The Section also administratively reviews, under Section 5 of the Act, voting changes, including such highly sensitive matters as redistricting plans to determine whether they are discriminatory in purpose or effect, and it monitors election day activities through the assignment and oversight of federal observers.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least one year post-J.D. experience. Applicants



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must submit Optional Application for Federal Employment (OF-612) or resume, writing sample, and current performance appraisal to:

U.S. Department of Justice  
Civil Rights Division  
Voting Section  
Attn: Attorney Advertisement  
GS-12/15  
P.O. Box 66128  
Washington, DC 20035-6128

No telephone calls please. Current salary and years of experience will determine the appropriate salary level, ranging from GS-12 (\$44,458 to \$57,800) to GS-15 (\$73,486 to \$95,531). These positions are open until filled, but no later than June 30, 1996. ♦

### **Experienced Attorney, GS-13 to GS-15 Office of Intelligence Policy and Review**

The DOJ Office of Attorney Personnel Management is seeking an experienced attorney for a position with the Office of Intelligence Policy and Review in Washington, D.C. Attorneys in these positions handle legal matters in operational intelligence cases concerning counterintelligence and international terrorism, primarily involving the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 et. seq.).

Applicants must possess a J.D. degree with superior academic credentials, have at least three years of post-J.D. experience, be an active member of the bar in good standing (any jurisdiction), possess superior written and analytical skills, and have a demonstrated capacity to work in a highly demanding environment. **Experience in preparation of legal memoranda and briefs is necessary.** A working knowledge of or experience in intelligence operations is not required. Applicants must be able to qualify for the highest and most sensitive security clearances. All appointments are conditional upon successful completion of an FBI background investigation. Applicants must submit a copy of their resume or OF-612 (Optional Application for Federal Employment), with a writing sample and a current performance appraisal, to:

U.S. Department of Justice  
Deputy Counsel for Intelligence Operations  
Office of Intelligence Policy and Review  
10th and Constitution Avenue, N.W.  
Room 6325  
Washington, DC 20530

A current SF-171 (Application for Federal Employment) will still be accepted as well. No telephone calls please. Applications must be received by July 1, 1996. Current salary and years of experience will determine the appropriate salary level ranging from GS-13 (\$52,867 to \$68,729) to GS-15 (\$73,486 to \$95,531). ♦

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## The USABulletin Wants You

The theme for the next issue will be Trial Techniques: Courtroom Innovation. If you would like another opportunity to contribute innovative trial techniques, please drop us a line by **July 10**. If an article you submitted to us is not in this issue, please look for it in the August 1996 issue.

The themes for our next three issues are:

August:	Trial Techniques: Courtroom Innovation
October:	International Legal Issues
December:	Civil Issues

Your ideas, suggestions, and articles for the three issues would be appreciated. Please contact David Nissman at AVISC01(DNISSMAN), (809)773-3920, or Wanda Morat at AEX02(WMORAT), (202)616-4619. One to three page submissions should be Emailed to AEX02(BULLETIN).

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Did you know that the *Bulletin* is available on EOUSA's Bulletin Board System (BBS)? Please contact your System Manager for information on how to download this publication or portions of it from the BBS.





**END**

**11-20-96**